

1 Investigator Manual

1.1 Foreword

As you perform your duties, remember your work is critical to FMCSA's successful compliance efforts. Your work makes our highways safer for the traveling public. In addition, by focusing on commercial motor vehicle (CMV) safety, your efforts will enable us to reach our strategic goal of reducing fatalities in CMV crashes to no more than 0.16 fatalities per 100 million (total) vehicle miles traveled by the end of 2011.

Your conformance to this Electronic Field Operations Training Manual (eFOTM) is designed to deliver our enforcement program in a standardized manner across all of the States and territories. This standardization will instill public confidence in our program as well as our Agency. It ensures legitimacy in our work and provides a solid professional foundation for our organization.

This manual will guide you and provide best practices applied successfully by your peers. It is intended to be a guide. Therefore, it cannot cover every situation you may encounter. Investigator-, Auditor-, and Inspector-discretion is critical in those unique and infrequent situations where deviation from the eFOTM is necessary. Remember, in these instances, it is crucial that you obtain the Division Administrator's concurrence before proceeding. Such approved deviations should be documented in Part C of the Compliance Review/Safety Audit.

Our Agency's mission requires the Investigator, Auditor, and Inspector to use problem-solving and investigative skills, enforcement, and educational technical assistance in achieving commercial vehicle safety. Use this manual to assist in achieving your goal of immediate and sustained compliance with Federal regulations from the carriers you review.

Thank you for your efforts! I also appreciate the hard work by the eFOTM Revision Committee in producing this updated version.

Rose A. McMurray

Chief Safety Officer

Updated in eFOTM: 7/28/2008

1.2 FOTM Introduction

The role of an inspector, auditor, or investigator is often complex. During any given day, you may be called upon to serve as an expert witness for a proceeding, volunteered to serve on a team to determine the agency's priorities, or asked to act in your supervisor's absence. Of course, this is in addition to conducting inspections, audits, and compliance reviews; answering carrier questions; attending training; downloading and uploading of software and data; initiating enforcement cases; scheduling investigations; and learning new and updated software. You get the picture.

The intent of this Field Operations Training Manual is to present investigative procedures and techniques that can be used while conducting all types of investigations. The manual can prove valuable as a tool in planning and completing simple, unusual, unique, and/or difficult investigations. The manual, however, will not replace your initiative and resourcefulness.

Uniformity is the overarching goal of the Field Operation Training Manual (FOTM) understanding that flexibility is required, as it is not possible to anticipate all scenarios that you may face. As part of our continuous improvement process, you are encouraged to submit additions and comments to the FOTM where it is felt others would benefit from your experience. (Many “unique” situations are those that are common to the field as a whole but show up infrequently in any given Division).

[Feedback](#)

This Field Operations Training Manual has been rewritten with the inspector, auditor, and investigator in mind. It has been prepared to assist you in the performance of investigative work in an easy to follow format.

The new FOTM is designed in a question and answer format following the Plain Language guidelines. How do these guidelines apply to a document like the FOTM? These guidelines attempt to create a document that is visually inviting, logically organized, and understandable on the first reading. Some of the tools that we use to achieve this are:

- Active voice with strong verbs,
- Short sentences,
- Personal pronouns,
- Concrete, familiar words,
- No surplus words,
- No legal jargon,
- Tabular presentation of complex information, and
- Use a design and layout that increase comprehension.

Please remember that is an on going effort that will be continually improved in future editions making this virtually a living document.

The FOTM has been structured to follow the review process from Start to Finish. Each part will have Investigative, CAPRI and Enforcement Procedures. Enforcement Procedures encompass motor carriers, shippers, etc. as well as drivers.

The concept of Mandatory Enforcement violations has been removed from our policies and procedures. This in no way eliminates enforcement from the equation but will allow you greater discretion to focus enforcement where performance data reflect violations which could contribute to a crash. Therefore, you should focus your enforcement in all Parts where Critical and Acute violations are found. In fact, it is incumbent on you to use your best judgment in order to target enforcement actions to areas that have the greatest impact on safety.

As you conduct your investigation, always be mindful that you are representing the Federal Motor Carrier Safety Administration. Your appearance, actions, statements during the investigation, and your work ethic are a reflection on the Agency.

Rules of Construction

The manual uses several rules of construction and the following sets forth how each is defined and how each is to be used when carrying out the functions of investigative work and the manual:

"Shall" is used in an imperative sense;

"Must" is used in an imperative sense;

"Should" is used in a recommendatory sense (see note below);

"May" is used in a permissive sense; and

"Includes" is used as a word of inclusion, not limitation.

Use of the Term “Should” in this manual.

The rules of construction above indicate that the term “should” is used in the recommendatory sense. The main reason actions in this manual are modified with the term “should” is to account for unexpected circumstances that may require deviation from normal procedures. We believe the “best practices” in this manual cover most situations, probably 95 percent. However, as no two investigations are identical, what works in one, or even the majority, may not work in other unique situations. Use of the term “should” recognizes the need for, and even encourages you, as an investigator, to use your judgment and deviate from the practices in this manual when warranted.

In cases where an action is mandatory, the action is modified by the term “shall” or “must.”

1.3 Symbols

THE MOST CURRENT VERSION OF THE FIELD OPERATIONS TRAINING MANUAL SUPERSEDES ANY PORTION OF THE PREVIOUS VERSIONS, MEMORANDA, FEDERAL POLICIES, AND INSTRUCTIONS. THE MOST CURRENT VERSION OF THE MANUAL SHOULD BE USED WHEN CONFLICTS OR DISCREPANCIES ARISE.

The following icons are used throughout this manual to show important information:



Additional guidance for Canadian carriers and/or drivers.



Information for our newer employees.



Ideas from your peers.



Update the Enforcement Management Information Systems



Consult with Service Center Attorneys



Additional guidance for Mexico-domiciled carriers and/or drivers.



Specific guidance for passenger carriers.



Specific policy guidance.



Additional guidance for PRISM States.



Suggestions on how to increase your efficiency.

1.4 Compliance Manual

[General Guidelines for Initiating an Investigation](#)

[Part 382 – Controlled Substances/Alcohol Use and Testing](#)

[Part 383 – Commercial Driver’s License \(CDL\) Standards](#)

[Part 387 - Insurance Requirements](#)

[Part 390 – General Requirements](#)

[Part 391 – Qualification of Drivers](#)

[Part 392 – Driving of Motor Vehicles](#)

[Parts 393 & 396 – Parts & Accessories, and Inspection, Repair & Maintenance](#)

[Part 395 – Hours of Service of Drivers](#)

[Compliance Reviews of HM Shippers](#)

[Cargo Tank Test and Inspection Facility Compliance Reviews](#)

[Security Assessments of HM Companies](#)

[Using HMPIP Software](#)

[Household Goods \(HHG\)](#)

[Part B - Recommendations/Requirements](#)

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1.4.1 General Guidelines for Initiating an Investigation

[When should an investigation be conducted?](#)

[Are we required to conduct investigations on carriers with a “less than satisfactory” safety rating?](#)

[Which types of carriers can I investigate?](#)

[How does an emergency condition requiring immediate response impact my review of a motor carrier?](#)

[What procedures should be taken to prepare for an investigation?](#)

[What should I do upon my arrival at the motor carrier’s office?](#)

[What areas should I cover during the opening interview with the motor carrier?](#)

[After I've interviewed the carrier, how do I complete Part A of the investigation?](#)

[How will I ensure the carrier is in compliance with SAFETEA-LU Section 4114 \(the Intrastate Operations of an Interstate Motor Carrier\)?](#)

[Special Topic: Motor Carriers of Passengers](#)

[Special Topic: Starving Students](#)

[Controlled Substances Subpart O Enforcement Initiative \(MC-ECE-0022-06\)](#)

[Special Procedures for Investigations](#)

[Illustration G-1: Sample Contact Letter and Questionnaire](#)

1.4.1.1 When should an investigation be conducted?

- An investigation may be conducted for several reasons. These reasons may include:
- A carrier having a qualifying SAFESTAT score (e.g., a carrier being rated as a Category A or B carrier for the current and previous month),
- In response to a carrier’s request for a safety rating upgrade (385.17),

- To determine potential violations of safety regulations,
- In response to non-frivolous complaints, or
- As the result of a significant fatal accident or HM incident.

When the motor carrier is rated as Category A or B for the current and previous month, the following requirements apply.

Motor Carriers Having Received a Compliance Review within the Previous 12 Months:

- Divisions are strongly encouraged to conduct compliance reviews on other high risk motor carriers,
- Divisions should consider if compliance verification requests based on prior compliance review violations have been received, and
- Divisions will list these motor carriers in an “Informational Monitoring” section of their monthly reports.

Motor Carriers Having Received a Compliance Review more than One Year Ago but less than Two Years Ago:

- Divisions have discretion not to conduct a compliance review if the SafeStat score drops below Category A or B before a compliance review is conducted. In exercising this discretion, the Divisions should consider:
 - If the motor carrier’s Safety Evaluation Area (SEA) values are based on prior compliance review violations that have been corrected,
 - If the motor carrier’s SEA values are based largely on crashes or inspections that occurred prior to the most recent compliance review, or
 - The motor carrier’s current safety performance data
- Divisions will list these motor carriers in a “Recommended for Compliance Review” section of their monthly reports.

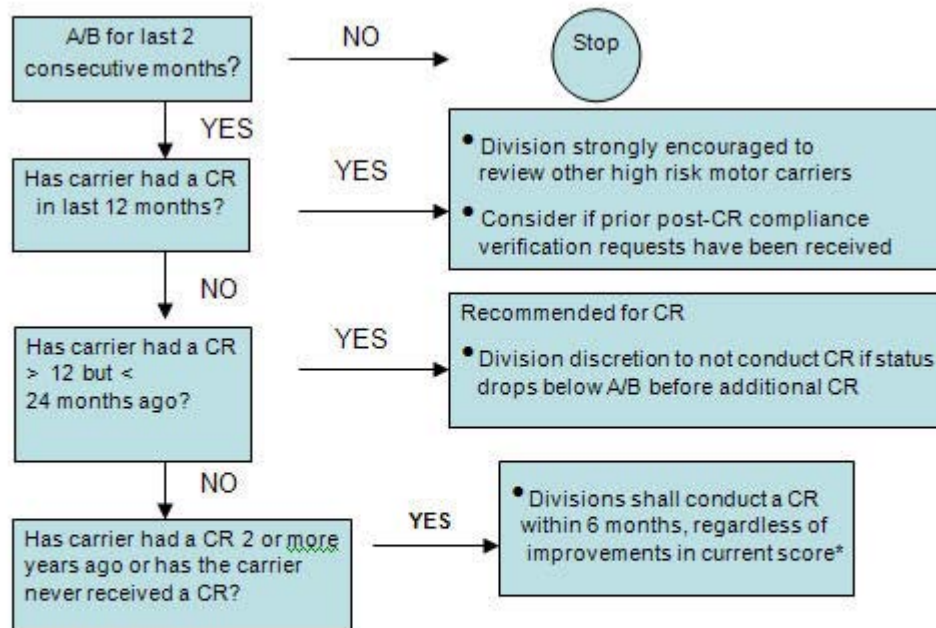
Motor Carriers Having Received a Compliance Review Two or More Years Ago or Have Never Received a Compliance Review:

- Divisions should conduct a compliance review within six months regardless of improvements in the motor carrier’s current SafeStat score.
- Divisions will list these motor carriers in a “Mandatory Compliance Review” section of their monthly reports.

Exception:

For motor carriers who have received a compliance review more than two years ago, the

Division Administrator may, with the Field Administrator's approval, extend the 6-month deadline for an additional six months if alternative interventions (e.g., consent agreement) have been applied.



-Exception: For motor carriers who have received a CR more than 2 years ago, the DA may, with the Field Administrator's approval, extend the 6-month deadline for an additional 6 months if alternative interventions (e.g., consent agreement) have been applied.

Updated: 7/28/2008

1.4.1.2 Are we required to conduct investigations on carriers with a less than satisfactory safety rating?

Yes. One of the key enforcement initiatives of the FMCSA in 2002 was to address a recommendation by the Office of Inspector General regarding the re-reviews of carriers that received a "conditional" safety rating in recent compliance reviews. Follow-up compliance reviews on "less than satisfactory" rated motor carriers should continue to be conducted.

1.4.1.3 Which types of carriers can I investigate?

Generally, you can only initiate an investigation against a motor carrier that operates a commercial motor vehicle (CMV) in interstate commerce. However, the Federal Motor Carrier Safety Administration's jurisdiction also extends to a motor carrier's intrastate operations in the following areas:

- Part 382 (Controlled Substances and Alcohol Use and Testing)
- Part 383 (Commercial Driver's License)
- Part 387 (Financial Responsibility)
- Part 395 (Hours of Service) See policy on Citing Intrastate Violations.
- Parts 171-180 (Hazardous Materials)

Procedures for conducting investigations on other entities, such as HM Shipper Reviews, Cargo Tank Facility Reviews, Household Goods Carriers, etc. are set forth in separate section of this FOTM.

1.4.1.4 How does an emergency condition requiring immediate response impact my review of a motor carrier?

SAFETEA-LU Section 4147 (Emergency Condition Requiring Immediate Response) created an exemption from the regulations in 49 CFR Parts 390-396, Subpart A of Part 397, and Part 399 for two types of drivers if compliance with those regulations would prevent the drivers from responding to an "emergency condition requiring immediate response." The two types are drivers of commercial motor vehicles used (1) primarily to transport propane winter heating fuel or (2) to respond to a pipeline emergency.

An "emergency condition requiring immediate response" is defined as "any condition that, if left unattended, is reasonably likely to result in immediate serious bodily harm, death, or substantial damage to property."

To illustrate in the case of propane, such conditions shall include but are not limited to the detection of gas odor, the activation of carbon monoxide alarms, the detection of carbon monoxide poisoning, and any real or suspected damage to a propane gas system following a severe storm or flooding. In the case of pipelines, such conditions include but are not limited to "indication of an abnormal pressure event, leak, release, or rupture."

An emergency condition requiring an immediate response under this exemption does not include requests to refill empty propane tanks.

Citing Violations

The exemption does not require specific documentation to demonstrate that a driver was operating under the exemption. However, a Safety Investigator should attempt to demonstrate that the driver does or does not meet the conditions of the exemption. Examples of evidence to support the proper use of the exemption are through carrier/shipper documents, carrier interviews, driver interviews, documents found in the vehicle, contacting state or local officials, contacting fuel/propane associations, or interviewing persons affected by the emergency condition. When it is determined that the driver did not

meet all the conditions of the exemption, the driver must comply with all applicable FMCSA regulations and should be cited for violation(s) as outlined below.

During a compliance review, when it is discovered that a driver claiming the exemption does not meet the conditions of the exemption, the Safety Investigator must cite all violations of the Federal Motor Carrier Safety Regulations for sections where violations occurred. For example, when the driver exceeds the 14-hour rule on a particular day that the driver did not meet the conditions of the exemption, the Safety Investigator should cite a violation of Section 395.3(a)(2). Violations will be cited and recommendations will be made using the selections that already exist in CAPRI. An explanation should be included in Part C of the compliance review report explaining why the exemption does not apply. The time periods for the review of various records are outlined within this document—the eFOTM.

Consult legal staff at one of the Service Centers before undertaking enforcement action against a driver who claims an exemption under this provision.

Added to eFOTM: 7/28/2008

1.4.1.5 What procedures should be taken to prepare for an investigation?


You should follow these steps to prepare for your investigation:

- [Make An Appointment](#)
- [Review the Carrier's File](#)
- [Obtain the Company Profile](#)
- [Request Files Maintained At Other Locations](#)
- [Review Other Motor Carrier Data](#)
- [Ensure You Have the Most Recent Software](#)

Make An Appointment

An appointment should be made prior to conducting a compliance review. This will ensure that the necessary personnel and records will be available upon your arrival at the place of business.

We recognize, however, that there may be instances where an appointment would compromise the quality of the investigation. When conducting a review on a household goods motor carrier, Investigators should refrain from making an appointment. Other considerations should be taken when preparing to conduct a safety/commercial (combo) compliance review. For example, there were prior contacts by the Division, or Service Center, and the carrier was unresponsive, or there were indications that records had been disordered or destroyed. In these instances an appointment should not be made and the reason documented in Part C of the compliance review.

 When you make an appointment, identify yourself and explain the purpose of your visit to the appropriate motor carrier official who has knowledge of the entire operation (e.g., President, Vice President, General Manager, etc).

During this initial contact with the carrier you will want to ensure the carrier's applicability to the FMCSRs and gather information including:

- **Interstate** shipments
- Use of **commercial motor vehicles**
- Physical **location** of carrier's office, including directions
- Name/Title of a responsible **contact** within the company

Once the appointment is made, you should send a confirmation letter and questionnaire to the carrier; to ensure that the carrier receives this information in a timely fashion, it is preferable that the letter and questionnaire are faxed or e-mailed to the carrier.



The confirmation letter informs the carrier of the place, time, and date of the compliance review. When the carrier completes the questionnaire and returns it to you, it will assist you in the completion of Part A and will prepare you for your investigation. Refer to [Illustration G-1](#) for a sample confirmation letter and questionnaire. You may find it necessary to modify these documents to meet your needs.



If you have difficulty locating motor carriers from the information currently in MCMIS (e.g. telephone number, physical address, and/or mailing address) you may use the following tools to assist you:

- www.anywho.com
- www.whowhere.lycos.com
- www.switchboard.com
- <http://411info.whitepages.com>
- www.google.com

You may also check with the office of the Secretary of State, or other State agency that issues articles of incorporation, or articles of organization (e.g. LLC) in your state or the state where the carrier is incorporated, if applicable. Also the State agency will have an Internet web site where information is readily available to the public. These agencies may be helpful in identifying the carrier's corporate officers or principal members being investigated.

Your State partners (MCSAP lead agency, Motor Vehicle Department/Registry, or other State agencies) are another resource. The appropriate state Department of Labor may be able to provide the name of the business reporting earnings for a specific employee.

You may also contact your local Service Center Enforcement Team for assistance with specialized database searches for locating drivers or carriers. The search system is referred to as Westlaw.

 You must notify the appropriate Canadian government/provincial representative (s) of our intention to investigate a Canadian motor carrier and/or shipper.

Review the Carrier's File

You should review the field office file and all previous enforcement reports to become familiar with the company's previous safety and regulatory problems. In addition, determine whether safety, financial, drug and alcohol, commercial, and hazardous materials regulations apply. The MCMIS reports may also be reviewed. MCMIS now provides a facsimile of the latest CR and a summary of previous CRs, roadside inspections, and crashes.

Obtain the Company Profile

You must obtain and review the motor company's profile. The company profile must be obtained no more than seven days before the investigation.

You should also download the XML file for the carrier at the same time you obtain the company profile. Importing this XML file into CAPRI will ensure you have the most accurate data available for this company and prevent data upload errors upon completion of the review. Importing this data is also a time saver, since many sections of Part A and Part C will be automatically filled in, requiring you to only verify the accuracy of the data and not have to fill it in yourself.

To download the XML file, follow these steps after ordering the Company Profile in MCMIS:

- Right-click on XML file and choose Save Target As, placing the file into a directory of your choice. Do not change the name of the file.

To import the XML data file, follow these steps in CAPRI:

- Choose File, Import, Company Data From Profile (XML).
- Select the directory where you downloaded the XML File.
- Select OK, a list of available XML files will be shown.
- Place checks in the boxes of the carriers you wish to import, select OK.

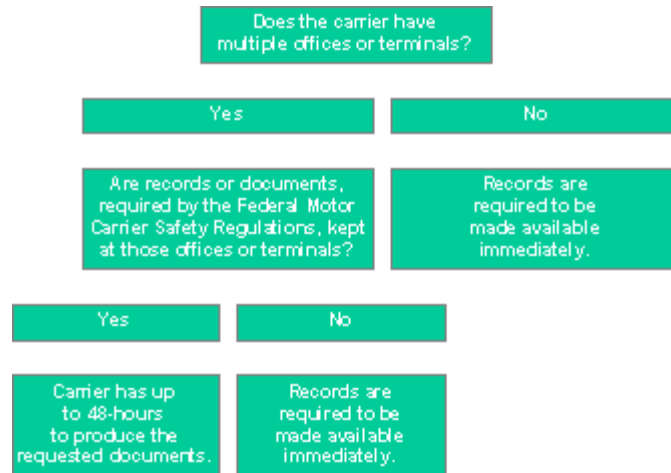
These carriers will now be shown on your Manage/Review list. Simply double click on their name to start your review.

The company profile may reveal non-compliance in certain areas. For example, a company profile may reveal that a motor carrier has an out-of-service rate higher than the national average. In this situation, your investigation should be focused on the carrier's vehicle maintenance program.

When you discover potential violations on the company profile, identify and record the drivers and/or vehicles that had the most violations. Include these in your sampling. Also, if the carrier doesn't have at least three Level I, II, and/or V vehicle inspections within the previous 12 months, inform the carrier that vehicles will need to be made available, for inspections, during your investigation.

Request Files Maintained At Other Locations

[****]



Description of Flow Chart


If the motor carrier maintains all their records at their principle place of business, then records must be made available immediately. However, some motor carriers have multiple offices or terminals where they may maintain some or all of their records. For records not maintained at the carrier's principle place of business they must be made available within a reasonable time but no longer than 48 hours upon your request. Saturday, Sunday, and Federal holidays are excluded from the computation of the 48-hour period. When requesting records 48 hours before your scheduled appointment be sure the motor carrier understands this is an official request, when the 48 hour period begins and ends, and you are expecting the documents to be available upon your arrival or you will cite failing to maintain the appropriate documents.

Refer to the minimum sampling chart in each Part of the regulations to obtain the minimum sample required.

Review Other Motor Carrier Data

If the motor carrier is a for-hire carrier, you **must** ensure that the company has been granted the proper interstate authority. You can check this data prior to the start of your investigation by visiting the FMCSA Licensing and Insurance Web site at: <http://li-public.fmcsa.dot.gov/>.

You should review the motor carriers SafeStat SEA values at <http://www.safer.fmcsa.dot.gov/CompanySnapshot.aspx>. By identifying data that contributed to a high SEA value (i.e., greater than 75, or 70 for hazardous material carriers), you will be able to concentrate on those areas, such as false records-of-duty status, for which the carrier has demonstrated problems. Note drivers and vehicles that experience repeated violations and include them in your sampling during the audit.

 You should also review other sources, such as <http://www.fmcsa.dot.gov/> and <https://qc.fmcsa.dot.gov> to determine a motor carriers safety posture. To expedite the audit process you may want to request other data before arriving at the carrier's place of business. For example, obtaining drivers lists allows you to perform CDLIS checks beforehand.

Note: When conducting a compliance review on a for-hire motor carrier, you MUST review <http://li-public.fmcsa.dot.gov/> to determine the motor carrier's licensing and insurance requirement status.

Ensure You Have the Most Recent Software


You should ensure, prior to the initiation of an investigation, that you have the latest versions of FMCSA software on your laptop computer. The latest versions are available by logging into <http://infosys.fmcsa.dot.gov/>. If there is an updated version of the software available, you should download the version and update your computer with the most recent version of the software.

Updated: 07/13/2007

1.4.1.6 What should I do upon my arrival at the motor carrier's office?

1. Identify yourself and your employer.
2. Display your credentials.
3. Ask to speak to a motor carrier/shipper official who has knowledge of the entire operation (e.g., President, Vice President, General Manager, etc). If he/she is not available, you should ask for the individual in charge of safety.
4. Explain the purpose of the visit to the official. Explain that various company records

will be reviewed and that you will need to talk to the individuals responsible for compliance with the safety, hazardous materials, financial responsibility, and commercial regulations.

5. If you were not able to meet with a corporate official, explain that you will need to meet with this person for your close out.
6. If a phone interview/questionnaire was not conducted with the motor carrier prior to your arrival, or if no appointment was made, obtain the information needed to complete Part A of the CR.
7.  **Explain to the carrier how long the review is expected to take, and at what time certain records and carrier employees will be needed. This allows you and the carrier to most efficiently complete the review process.**


1.4.1.7 What areas should I cover during the opening interview with the motor carrier?

[Operating Characteristics](#)
[Paperwork and Flow](#)
[Driver Issues](#)
[Tour the Facility](#)

Operating Characteristics

You should determine the destinations of regular trips, the identity of customers that provide the carrier with the most business, and the carrier's busiest and slowest times of the year. Also, inquire as to how drivers are compensated, the level of driver turnover, the extent to which the carrier automates its operation and record keeping, vehicle maintenance procedures, controlled substances and alcohol testing program, etc. Your goal is to ensure there are adequate safety controls in place to comply with the FMCSRs.

Paperwork and Flow

 You should become familiar with the motor carrier's paperwork system related to its operations, payroll systems, filing systems, etc. If the documentation of violations becomes necessary, this knowledge will enable you to gather and copy records about drivers' trips quickly and efficiently. You should determine the supporting documents that the motor carrier obtains and/or generates and the locations of these records. Become familiar with any business records that disclose the location and activity of drivers at specific times or during certain time periods. These records will enable you to verify the accuracy of drivers' records of duty status. Ask the official to demonstrate the paperwork flow of their operation, if supporting documents are just arriving view how the documents are distributed. Understanding the process, what information is available, and who handles certain paperwork will enable you to determine which documents may be useful during the review process.

Driver Issues

Ask the appropriate motor carrier official about the company's procedures for driver

hiring, qualification, training and also request a list of drivers employed in the last 365 days. This list should include their hire and termination dates. Once the carrier provides you with the information verify the accuracy of the list by reviewing the motor carrier profile, payroll records, dispatch records, bills of lading, and/or shipping documents during your investigation.

Tour the Facility

Ask the carrier to tour their facility. Take note of posted materials, related to the carrier's knowledge and compliance with the regulations, and how the general day-to-day operations work. **During the tour look for the presence of hazardous materials (HM), especially in the areas where products and goods are fabricated, cleaned, stored, or shipped.** Some motor carriers and shippers may not know that they are shipping and/or transporting HM. Often HM is discovered during the tour of the OS&D (overage, shortage, and damaged) area of the carrier's operation.

1.4.1.8 After I've interviewed the carrier, how do I complete Part A of the investigation?

If a questionnaire was used in the phone interview with the motor carrier prior to your arrival, you should use it to complete Part A. If a phone interview of the motor carrier was not conducted prior to your arrival, conduct an interview with the appropriate official to complete Part A. Complete Part A as follows:

[Legal Name of Motor Carrier/Shipper](#)

[Doing Business As \(DBA\)](#)

[Employer Identification Number \(EIN\)/Social Security Number \(SSN\)](#)

[Gross Revenue](#)

[Mileage](#)


[Equipment](#)

[Types of Passenger-Carrying Vehicles](#)

[Drivers](#)

Legal Name of Motor Carrier/Shipper

Verify and enter the correct and complete legal name of the motor carrier. If this is not done, further action against the motor carrier may be hindered. In the case of a corporation, obtain the exact company name by asking a corporate officer, by examining the Articles of Incorporation, and/or by requesting a document that has the corporate seal affixed. Use the full names of corporate officers, partners, or the sole proprietor (Note additional corporate officers or members, not already listed in Part A, in Part C).

 **If the legal name is different than what is recorded in our database, make the change in MCMIS before you upload the compliance review. Otherwise, the upload may generate an error message and reject the review.**

 ***Doing Business As (DBA)***

In the case of individuals or corporations who are doing business under a name, other than the legal name, enter the doing-business-as (DBA) name in the appropriate field. For example, if John Jones is doing business as JJ Trucking, enter “JJ Trucking”. DBAs are also known as operating names, assumed business names (ABN), common names, or trade names. Do not repeat the legal name in the dba field.

 ***Employer Identification Number (EIN)/Social Security Number (SSN)***

If a carrier is operating as a sole proprietor, obtain the social security number, or the EIN. If the carrier operates as a partnership or corporation, obtain the EIN. In some circumstances a parent company and its subsidiaries will share the same EIN. This is permissible under IRS rules and is just a reflection of the fact that the parent corporation files a single tax return that includes the subsidiaries. It is important that this information is correct. The EIN is also known as the Federal Tax ID Number.

 ***Gross Revenue***


You will need to enter all revenue generated by the legal entity being reviewed (ensure that you include all non-transportation revenue as well). If the motor carrier refuses to release this figure, or the figure is for less than 12 months, document this information in Part C. When a carrier refuses to provide the gross revenue figure, consult with your Supervisor, Division Administrator/State Director, or Service Center to estimate the gross revenue. If no figure was provided, estimate the gross revenue using the following:

$$\text{Mileage (previous 12 months)} \times \$1.50 = \text{Estimated Gross Revenue}$$

Remember to convert foreign currency into US dollars.

 ***Mileage (previous 12 months)***

For motor carriers domiciled in the United States, enter total commercial motor vehicle mileage for all power units under the carrier’s control recorded on Part A. Include mileage in interstate and intrastate commerce, and mileage in Canada and Mexico.

 **For motor carriers domiciled in Canada and Mexico, you will need to enter mileage occurring in the United States or as part of an interstate trip to or from the United States. Remember to convert kilometers into US miles.**

If the motor carrier has been operating for less than 12 months, estimate the annual mileage based on the total mileage since beginning operations. For example, a motor carrier has 800,000 total vehicle miles since beginning operations 8 months ago.

Fuel tax records may be a source to verify mileage (e.g. IFTA) and should be reviewed when available.

The following formula shows how the Annual Mileage Estimate is determined:

Annual Mileage Estimate = $\frac{(12 \times \text{Miles Operated})}{\text{Months Operated}}$
For this example: Annual Mileage Estimate = $\frac{(12 \times 800,000)}{8} = 1,200,000$

Equipment

The data you enter should reflect the vehicles that are, or could be, operated at the time of the investigation with the exception of trip-leased vehicles. You should enter an average of trip-leased vehicles per month. If the same vehicle is used several times in a month, count each trip separately. "Term-leased" equipment is often used interchangeably with the term "permanent-leased." A term-lease lasts for 30 days or longer. A trip-lease lasts for less than 30 days.

Types of Passenger-Carrier Vehicles



The following are passenger carrying equipment definitions for completion of Part A:

- Intercity Motor Bus (Motorcoach) - A vehicle designed for long distance transportation of passengers, usually equipped with a lavatory, storage racks above the seats, and a baggage hold beneath the cabin.
- School Bus - A vehicle designed and/or equipped mainly to carry primary and secondary students to and from school, usually built on a medium or large truck chassis.
- Mini-bus/Van - A multi-purpose passenger vehicle with a capacity of 10-24 people, typically built on a small truck chassis.
- Limousine - A passenger vehicle usually built on a lengthened automobile chassis.
- Small Passenger-Carrying Commercial Motor Vehicles or Camionetas - designed or used to transport between 9 and 15 passengers (including the driver) in interstate

commerce, when they are directly compensated for such services and the vehicle is operated beyond a 75 air mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location.



Additionally, for CRs conducted in Performance and Registration Information Systems Management (PRISM) states, obtain a list of all power units operated under the motor carrier's control (leased and owned). Include the name and address of the vehicle registrant and owner, the vehicle identification number, state license number and the state of license issuance. The list may be used to provide notice of potential State vehicle registration sanctions to vehicle registrants and owners. In instances in which an entity other than the motor carrier owns and/or registers the vehicles sanction notices may be sent to them also.

Drivers

Ask the motor carrier to provide you with the average number of driver positions for the last 365 days. The total number of drivers who are subject to the FMCSR include single-employer drivers, multiple-employer drivers, and the average number of trip leased drivers per month used in the prior 365 days. A driver who was trip leased five times during a month is counted five times rather than once. A driver is counted as a CDL driver if he/she operates a commercial motor vehicle as defined in Part 383.

Although a driver may fit into more than one category, identify the driver in only one category.

To determine the sampling for Part 382 (random controlled substances and alcohol testing), ask the motor carrier to provide you with the average number of driver positions for the last 365 days. (Include all employees who possess a CDL). If you deviate from the driver sampling charts for other Parts of the FMCSR, you must explain the deviation on Part C.

1.4.1.9 How will I ensure the carrier is in compliance with SAFETEA-LU Section 4114 (the Intrastate Operations of an Interstate Motor Carrier)?

Is the Safety Investigator (SI) required to determine the motor carrier's compliance with State regulations that FMCSA has previously determined are not compatible with the Federal Motor Carrier Safety Regulations (FMCSRs)?

No. This policy applies only to the motor carrier's compliance with the laws and regulations that are compatible with the FMCSRs.

How does a SI handle State regulations that are more stringent than the FMCSRs?

If violations of more stringent **INTRASTATE** regulations are discovered, they should not be considered unless the violations would be violations of the Federal standard.

Will a motor carrier be able to distinguish between Federal and State violations cited on one form?

Yes. Violations will be recorded separately and will be identified in the Compliance Analysis and Performance Review Information system (CAPRI), Part B Violations, as Federal or State.

Is a SI required to cite a specific State code or just note a violation as a State regulation rather than writing out the State code numbers?

The correct cite for violations discovered is to cite the FMCSRs, regardless of whether the trip was an **INTRASTATE** or **INTERSTATE** trip if the Federal and State requirements are the same. As a secondary violation, a State code can be cited for further clarification but the Federal cite will direct the motor carrier to the specific type of violation discovered. For instances where there are differences in the two requirements (i.e., Federal requirement to be 21 years of age, State requirement to be 18 years of age), the State cite should be used.

What does a SI do if a motor carrier refuses to allow him/her to review INTRASTATE

information?

Section 4114 provides FMCSA with the authority to review both **INTERSTATE** and **INTRASTATE** records to determine compliance with safety regulations. For motor carriers who refuse to provide **INTRASTATE** records, follow the eFOTM guidance for motor carriers who refuse to provide **INTERSTATE** records.

Does the SI combine INTERSTATE and INTRASTATE operations to determine the minimum number of drivers, vehicles, and/or records to be sampled?

Yes. For example, the minimum number of drivers to be sampled would be determined by reference to the total number of drivers subject to the review, regardless of whether the drivers are **INTERSTATE** or **INTRASTATE**. This answer should not be interpreted to require a proportional **INTERSTATE/INTRASTATE** selection of drivers/vehicles.

How are INTRASTATE violations that are discovered in another State treated?

Because the review will be limited to a motor carrier's **INTERSTATE** operations and its **INTRASTATE** operations in the State of domicile, generally **INTRASTATE** violations in another State would not be found. However, if serious violations in another State are found, the information should be shared with the FMCSA Division office in that State so that it can notify its State counterparts.

How is the sampling size determined for foreign motor carriers?

To determine the sampling size for foreign motor carriers, use only the drivers and vehicles subject to the FMCSRs.

If a violation is discovered that is both a Federal and a State violation while on the same trip (e.g., failing to have a driver medically re-examined every 24 months), should it be cited twice?

No. To cite it twice would penalize the motor carrier twice for essentially the same violation. It should be cited once as a Federal violation.

Will the SI need to change the rating process in CAPRI under the preferences tab to include State violations in the Federal rating process?

Yes. Users of CAPRI will need to **check** the box titled: "Include State violations in Federal rating process" so **INTRASTATE** violations are included in the rating process.

To check the box, the user will:

- Go to the main menu of CAPRI

- Click **Tools**
- Click **Preferences**
- Click **Rating**

To check the box, click in the box titled: “Include State violations in Federal rating process” and a green check mark will appear. By the user changing his/her preference to include State violations in the Federal rating process, it is a one time preference change that will get saved and the user will not need to check the box for each review.

Click **OK** to return to the main menu.

Does this memorandum mean FMCSA can now rate INTRASTATE-only motor carriers?

No. Except for hazardous materials (HM) **INTRASTATE** motor carriers requiring a HM safety permit, FMCSA rates only motor carriers that operate in **INTERSTATE** commerce.

Will this memorandum change FMCSA’s policy requiring drivers to comply with 49 CFR Part 395 for the previous 7/8 consecutive days and subsequent 7/8 consecutive days of an INTERSTATE trip, even if the driver operated only in INTRASTATE commerce during the 7/8 consecutive days?

No. Sis should continue to follow existing policy guidance and the eFOTM when these circumstances apply.

If INTERSTATE and INTRASTATE violations are recorded separately in CAPRI, will CAPRI be able to total the two separate violations to determine the combined extent of the violations or will that have to be done manually?

CAPRI **will do most of this automatically** as explained in the questions and answers that follow.

How would a SI record the number of INTERSTATE and INTRASTATE drivers checked? For example, a SI reviews five drivers for hours-of-service violations. One driver is INTERSTATE and four are INTRASTATE. The INTERSTATE driver occasionally operates in INTERSTATE commerce but mainly operates in INTRASTATE commerce.

The SI would record the drivers as follows:

Number of **INTERSTATE** drivers checked as one

Number of **INTRASTATE** drivers checked as five

The **INTERSTATE** driver is recorded as “Number of drivers checked” for both **INTERSTATE**

and **INTRASTATE** because the driver is involved in both.

How would the SI record 44 INTERSTATE violations of 103 checked (two drivers in violation of six checked) and 11 INTRASTATE violations of 22 checked (different two drivers of original six checked)?

The SI would record the violations as follows:

Federal – Number Discovered = 44 of 103, Number Checked = 2 of 6 drivers.

State – Number Discovered = 11 of 22, Number Checked = 2 of 6 drivers

CAPRI will total the number of **INTERSTATE** and **INTRASTATE** violations discovered versus the number checked only for safety rating purposes.

How would Federal and State violations by a driver who operates in INTERSTATE and INTRASTATE commerce be recorded in CAPRI? For example, you review one driver's Record of Duty Status for 30 days. Twenty days are INTERSTATE with three violations discovered and 10 days are INTRASTATE with one violation discovered.

The SI would record the violations as follows:

INTERSTATE: Number Discovered = 3, Number Checked = 20

INTRASTATE: Number Discovered = 1, Number Checked = 10

For rating purposes, CAPRI will total the Number Discovered = 4 and total the Number Checked = 30. CAPRI will automatically record the violation as Critical (10% or more).

Using the same example above, 20 days are INTERSTATE with no violations discovered and 10 days are INTRASTATE with one violation discovered.

You would record the violations as follows:

INTERSTATE: Number Discovered = 0, Number Checked = 20

INTRASTATE: Number Discovered = 1, Number Checked = 10

For rating purposes, CAPRI will total the Number Discovered = 1 and total the Number Checked = 30. CAPRI will automatically record the violation as non-Critical.

Note: Even when no **INTERSTATE** violations are discovered, the SI must record the Number Checked in Part B, Violations so that CAPRI can properly calculate the total number of RODS checked for safety rating purposes.

Under what circumstances will CAPRI not allow the SI to enter "Number Discovered = 0, Number Checked = (insert number checked)"?

CAPRI will not allow the SI to enter “Number Discovered = 0, Number Checked = (insert number checked)” when **INTERSTATE** violations result in a Critical violation and no violations were discovered **INTRASTATE**, or when **INTRASTATE** violations result in a Critical violation and no **INTERSTATE** violations were discovered. For example,

INTERSTATE: Number Discovered = 5, Number Checked = 20

INTRASTATE: Number Discovered = 0, Number Checked = 10

CAPRI will not allow the SI to enter the **INTRASTATE** violations as Number Discovered = 0, Number Checked = 10 because the **INTERSTATE** violation is already recorded as a Critical violation (10% or >). If the SI records this entry, CAPRI will show a Fatal Error message: “Critical violations must have a Discovered and Checked.”

Although CAPRI will show only the INTERSTATE Number Checked = 20 and not the 30 actually checked, the results are the same and the violation is Critical for safety rating purposes. The SI must record in the “example” of this violation cite that “although the Number Checked = 20, the total Number Checked does not include the 10 checked for INTRASTATE.”

CAPRI will be enhanced for a subsequent release that will allow the SI to include Number Discovered = 0, Number Checked = (insert number checked) so that CAPRI will reflect the total amount of **INTERSTATE** and **INTRASTATE** records checked in all circumstances.

Does this policy change the way FMCSA collects mileage on Canadian and Mexican motor carriers for the purposes of calculating the safety fitness rating?

Yes. Section 4114 allows FMCSA to include in the total mileage: (i) the mileage occurring in the United States; (ii) mileage occurring as part of a trip to or from the United States; and (iii) mileage within Canada and Mexico even if the transportation does not involve movements into or out of the United States, provided that the owner or operator also conducts operations within the United States.

Can INTRASTATE data prior to August 31, 2006 be included in a CR completed on or after August 31, 2006?

Yes. **INTRASTATE** data will be included in CRs conducted on or after August 31, 2006, although the data itself may be from the 365 days prior to the CR. For example, an **INTRASTATE** crash that occurred on June 1, 2006 may be included in a CR conducted on May 1, 2007.

Does section 4114 change section 390.15 – Interpretations, Question 4, which states: Does a foreign-based motor carrier’s accident register have to include accidents that occur in Canada or Mexico?

No but such accidents now will be entered in CAPRI and count towards the rating.

Guidance: Motor carriers must record accidents occurring within the UNITED STATES and

on segments of **INTERSTATE** movements into Canada between the UNITED STATES-Canadian border and the first physical delivery location of a Canadian consignee. FMCSA further believes its regulations require the documentation of accidents for segments of **INTERSTATE** movements between the UNITED STATES-Mexican border and a point in Mexico. However, FMCSA does not have authority over Canadian and Mexican motor carriers that operate within their own countries where the transportation does not involve movements into or out of the United States.

If a Canada-domiciled or Mexico-domiciled motor carrier had an accident or records an accident on its accident register that occurred while operating within its own country, can it be used for purposes of calculating the crash rate in Factor 6 on the CR?

Yes.

Are Canada-domiciled and Mexico-domiciled motor carriers required under section 390.29(b) to make available for inspection upon request records of accidents that occurred while operating within their own country where the transportation does not involve movements into or out of the United States?

No. These records are not required by FMCSA's regulations. However, if such motor carriers do not provide access to crashes within their country, then the mileage within their country should not be included.

Can violations of a Canadian or Mexican regulation be cited on the CR?

No.

Added to eFOTM: 7/28/2008

1.4.1.10 Special Topic: Motor Carriers of Passengers



What are the important issues to remember when investigating carriers of passengers?

Private motor carriers of passengers (PMCPs) became subject to the FMCSR on January 1, 1995. They are separated into two groups, business or nonbusiness, and are exempt from certain requirements of the FMCSR. Motor carriers operating vehicles designed or used to transport 9 to 15 passengers (including the driver) for compensation became initially regulated by FMCSA on February 12, 2001. More information on each of these types of operations follows:

[For Hire Carriers of Passengers](#)

[Business Private Motor Carriers of Passengers \(Business PMCP\)](#)

[Nonbusiness Private Motor Carriers of Passengers \(Nonbusiness PMCP\)](#)

[Small Passenger-Carrying Vehicles Insurance Requirements School Bus Transportation](#)

For Hire Carriers of Passengers

What are the three factors that must be present to classify a passenger carrier as for-hire?

- The motor carrier provides interstate transportation of passengers for a commercial purpose,
- The motor carrier is compensated, either directly or indirectly, for the transportation service provided, and
- The transportation service is generally available to the public at large.

Business Private Motor Carriers of Passengers (Business PMCP)

What is a Business PMCP?

Business PMCP provide private transportation of passengers in the furtherance of a commercial purpose. Examples include companies that use buses to transport their own employees and professional musicians who use buses for concert tours. Commercial businesses that provide passenger transportation for compensation to the general public are not business PMCPs.

What parts of the Federal Motor Carrier Safety Regulations apply to a Business PMCP?

Part	Regulatory Topic	Applicable
380	Special Training Requirements	Partial (Subject to Part 380 Subpart E, Entry -Level Driver Training Requirements)
382	Controlled Substances and Alcohol Use and Testing	Yes
383	Commercial Driver's License	Yes
387	Financial Responsibility (Insurance/Surety)	Yes at some point (See note below)
390	General Applicability and Definitions	Yes
391	Qualification of Drivers	Yes
392	Driving of Commercial Motor Vehicles	Yes
393	Parts and Accessories	Yes
395	Hours of Service of Drivers	Yes
396	Inspection, Repair, and Maintenance	Yes

Do I need to be aware of any exemptions?

Yes. Business PMCP are not subject to the road test requirements of Part 391. The Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU) mandates FMCSA make PMCPs (including business PMCPs) subject to some level of financial responsibility. Until FMCSA has published final regulations implementing the statutory section, business PMCPs are not subject to a minimum level of financial responsibility.

■ Nonbusiness Private Motor Carriers of Passengers (Nonbusiness PMCP)

What is a Nonbusiness PMCP?

Nonbusiness PMCPs provide private transportation of passengers that is not in the furtherance of a commercial purpose. Examples of nonbusiness PMCPs include churches, private schools, civic organizations, scout groups, and other charitable organizations that may purchase or lease buses for the transportation of their respective groups. **Nonbusiness PMCPs are not subject to Safety Audits.**

What parts of the Federal Motor Carrier Safety Regulations apply to a Nonbusiness PMCP?

Part	Regulatory Topic	Applicable
380	Special Training Requirements	Partial (Subject to Part 380 Subpart E, Entry -Level Driver Training Requirements)
382	Controlled Substances and Alcohol Use and Testing	Yes
383	Commercial Driver's License	Yes
387	Financial Responsibility (Insurance/Surety)	Yes at some point (See note below)
390	General Applicability and Definitions	Yes
391	Qualification of Drivers	Partial
392	Driving of Commercial Motor Vehicles	Yes
393	Parts and Accessories	Yes
395	Hours of Service of Drivers	Partial
396	Inspection, Repair, and Maintenance	Partial

Note: The SAFETEA-LU statute mandates FMCSA make PMCPs (including nonbusiness PMCPs) subject to some level of financial responsibility. Until FMCSA has published final regulations implementing the statutory section, nonbusiness PMCPs are not subject to a minimum level of financial responsibility.

Do I need to be aware of any exemptions?

Nonbusiness PMCP are not subject to:

- Various requirements of Part 391 such as:
 - Driver required to be at least 21 years old
 - Annual list/certificate of violations
 - Disclosure of, investigation into, and inquiries about the background, character, and driving record of drivers
 - Road test
 - Maintenance of files and records including driver qualification files and medical examiner's certificates
- Paperwork and record keeping requirements of Part 395 such as records of duty status
- Part 396 record keeping requirements pertaining to vehicular inspection, repair, and maintenance

Does Part 390.21 require nonbusiness PMCPs to mark their vehicles?

All PMCPs must register with the FMCSA as required by 390.19, and mark their vehicles according to 390.21 with their name and U.S. DOT number.

Do our regulations require that drivers of nonbusiness PMCP be medically examined?

Section 391.68(a)(4) specifically states that much of Sections 391.41 and 391.45, which require a driver to be medically examined and to have a medical examiner's certificate on his/her person, do not apply to nonbusiness PMCPs. However, nonbusiness PMCP drivers are subject to the minimum physical qualification standards found in Section 391.41(b)(1)-(13) and may be placed out-of-service during inspections if they are required by Section 391.41 to have a waiver and do not possess one.

Are nonbusiness PMCP drivers subject to the driver's hours of service regulations?

Yes. However, they are not required to prepare or maintain records of duty status. Nonbusiness PMCP driver's hours of service will be evaluated by enforcement officers during inspections based on evidence available at the inspection location. It is recognized that some individuals who volunteer to drive for nonbusiness PMCPs may also drive for other motor carriers and in that capacity are required to maintain a record of duty status. All on-duty time performed for a nonbusiness PMCP must be recorded on the records of duty-status submitted to that driver's regularly employing motor carrier.

Are nonbusiness PMCPs required to have their vehicles inspected?

Section 396.17 requires that commercial motor vehicles be inspected at least once annually. The inspection must be completed by a qualified inspector and must include all components

identified in Appendix G of the FMCSR. However, nonbusiness PMCPs are not subject to the periodic inspection record keeping requirements in section 396.21.

Small Passenger-Carrying Vehicles

What is a Small Passenger-Carrying Vehicle?

The Federal Motor Carrier Safety Administration (FMCSA) has safety regulatory oversight of for-hire operators of small passenger-carrying vehicles that engage in interstate commerce. The extent of the requirements depends on the nature of the operation. The regulations basically separate such operations into two groups:

Group One

For-hire motor carriers that:

- Operate vehicles designed or used to transport 9 to 15 passengers (including the driver) in interstate commerce,
- Are directly compensated for such transportation services, and
- Operate such vehicles beyond a 75 air mile radius from the driver's normal work-reporting location.

Group Two

- Operate vehicles designed or used to transport 9 to 15 passengers (including the driver) in interstate commerce, **and**
- Are indirectly compensated for such transportation services, **or**
- Are directly compensated, but operate within a 75 air mile radius.

Note: The SAFETEA-LU statute mandates FMCSA make interstate operations of commercial motor vehicles designed to transport 9 to 15 passengers (including the driver) subject to the FMCSRs regardless of the distance traveled. Until FMCSA has published final regulations implementing the statutory section, the current regulations apply.

What does direct compensation mean?

Direct compensation means payment made to the motor carrier by the passengers or the individual acting on behalf of the passengers for the transportation services provided, and not included in a total package charge or other assessment for highway transportation services. Indirect compensation means the charge for the transportation services provided is included in a total package charge or other assessment.

What requirements are applicable to operators of Small Passenger-Carrying Vehicles in Group One?

Passenger carriers in the first group are subject to all of the safety standards in part 385 and parts 390 through 396 of the Federal Motor Carrier Safety Regulations. These carriers are required to file a motor carrier identification report (Form MCS-150) and mark their vehicles with a USDOT identification number. These carriers are also subject to safety ratings,

accident register record keeping, medical examination requirements for drivers, driver qualification files, hours of service limitations, records of duty status, and record keeping for inspection, repair, and maintenance.

What requirements are applicable to operators of Small Passenger-Carrying Vehicles in Group Two?

Passenger carriers in the second group are required to file a motor carrier identification report, mark their vehicles with a USDOT identification number, and maintain an accident register.

Insurance Requirements

What are the insurance requirements for For-Hire Passenger Carriers, Business PMCP, Nonbusiness PMCP, and operators of Small Passenger-Carrying Vehicles?

Regulations covering minimum levels of financial responsibility (insurance) are found in Part 387, Subpart B. The chart below summarizes the applicability of the minimum levels of financial responsibility regulations to passenger carriers.

Vehicle	For-hire Passenger Carriers	Business PMCPs	Nonbusiness PMCPs
Vehicle with a seating capacity of 16 or more.	\$5,000,000 insurance coverage required (See Note 2 below).	Not Subject (See Note 1 below).	Not Subject (See Note 1 below).
Vehicle with a seating capacity of 15 or less.	\$1,500,000 insurance coverage required (See Note 2 below).	Not Subject (See Note 1 below).	Not Subject (See Note 1 below).

Note 1: The SAFETEA-LU statute mandates FMCSA make PMCPs subject to some level of financial responsibility. Until FMCSA has published final regulations implementing the statutory section, nonbusiness PMCPs are not subject to a minimum level of financial responsibility.

Note 2: Passenger carriers that are Federal Transit Administration grantees (Transit Benefit Operators) under 49 U.S.C. 5307, 5310, or 5311 are required to maintain liability insurance at least at the highest level required by any of the States in which the transit service area is located instead of the required levels listed above for for-hire passenger carriers.

Do I need to be aware of any exemptions?

Minimum financial responsibility regulations do not apply to:

- A motor vehicle transporting only school children and teachers to and from school.
- A motor vehicle providing taxicab service, having a seating capacity of less than 7 passengers, and not operating on a regular route or between specified points.
- A motor vehicle carrying less than 16 individuals in a single daily round trip to commute to and from work.

- A motor vehicle operated by a motor carrier under contract providing transportation of pre-primary, primary, and secondary students for extracurricular trips organized, sponsored, and paid by a school district.

School Bus Transportation

What parts of the Federal Motor Carrier Safety Regulations (390-399) apply to operators who provide school bus transportation?

Type	Home-to-School or School-to-Home	Extracurricular School Activities
Public School Transporting Students	Not Subject	Not Subject
Private School Transporting Pre-primary, Primary, and Secondary Students	Not Subject	Subject as Nonbusiness PMCPs
Private School Transporting Post-secondary Students	Subject as Nonbusiness PMCPs	Subject as Nonbusiness PMCPs
For-Hire Contractors Transporting Pre-primary, Primary, and Secondary Students	Not Subject	Subject as For-Hire Carrier
For-Hire Contractors Transporting Post-Secondary Students	Subject as For-Hire Carrier	Subject as For-Hire Carrier

What are the insurance requirements for school bus contractors that are for-hire operators of school buses engaged in INTERSTATE transportation?

Type of Passenger Carrier	Home-to-School or School-to-Home	Extracurricular School Trips Organized, Sponsored and Paid for by the School	Extracurricular School Trips Organized, Sponsored and Paid for by an Independent Group (e.g., booster clubs, etc).
Transportation of Pre-primary, Primary, and Secondary Students and Accompanying Teachers.	Not Subject	Not Subject	Bus seating capacity of 16 or more: \$5,000,000 insurance coverage required. Bus seating capacity of 15 or less: \$1,500,000 insurance coverage required

Transportation of Post-secondary Students.	Bus seating capacity of 16 or more: \$5,000,000 insurance coverage required.	Bus seating capacity of 16 or more: \$5,000,000 insurance coverage required.	Bus seating capacity of 16 or more: \$5,000,000 insurance coverage required.
	Bus seating capacity of 15 or less: \$1,500,000 insurance coverage required.	Bus seating capacity of 15 or less: \$1,500,000 insurance coverage required.	Bus seating capacity of 15 or less: \$1,500,000 insurance coverage required.

What are the procedures for the use of safety information about bus companies provided by Department of Defense?

The Department of Defense has a requirement that bus companies pass a compliance audit, which is similar to a compliance review, in order to be hired to transport military personnel. Compliance audits result in an inspection rating that has a numeric range from one (best) to five (worst). Inspection ratings 4 and 5 are analogous to FMCSA’s conditional and unsatisfactory ratings respectively. A compliance review must be conducted on any bus company that receives a 5 inspection rating. These compliance reviews should be completed within 6 months after the Division office is notified of a 5 inspection rating. Division offices will usually be notified of such information by e-mail, which includes an electronic file of the compliance audit report.

Division offices will also be notified of passenger carriers that are assigned a 4 inspection rating. Division Administrators should consider this and other information in deciding how to deal with the passenger carrier considered to be in marginal compliance. In every case, a copy of the compliance audit report must be placed in the passenger carrier’s file for future reference.

Updated: 7/28/2008

1.4.1.11 Special Topic: Starving Students

In March 2005, the Assistant Administrator (AA) issued five Final Orders (the Orders) addressing documentation required to support civil penalty calculations. In all five cases, the AA concluded that the Field Administrator (FA) must prove each violation considered in the Uniform Fine Assessment (UFA) algorithm for the extent of violation factor, even if the violation was not charged in the Notice of Claim (NOC). According to the Orders, the penalty calculation treats violations discovered during a compliance review (CR) as violations in fact. For that reason, the AA rejected inclusion of violations discovered during the CR—which were in turn treated as violations in fact by UFA—as part of the extent portion of the penalty calculation when no documentation or evidence was submitted by the FA to prove the discovered, non-charged violations.

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1.4.1.12 Special Topic: Controlled Substances Subpart O Enforcement Initiative

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1.4.1.13 Special Procedures for Investigations

Carriers with Proposed Unsatisfactory Ratings

[Follow-Up Compliance Reviews](#)
[Streamlined Compliance Reviews](#)
[Terminal Reviews](#)


What are additional steps I should take if the carrier has a proposed Unsatisfactory

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Follow-Up Compliance Reviews

If a motor carrier receives a proposed unsatisfactory rating and a follow-up CR is conducted during the 45/60 day improvement period, you should ensure that the review is designated as a “follow-up review to a 45/60 day proposed/final unsatisfactory safety rating” in Part A of CAPRI. ^{b2, b7e}



An improvement to a proposed unsatisfactory rating resulting from a follow-up CR is not effective until an official rating letter is generated in headquarters. Generally, CRs will be rated the same day they are uploaded to MCMIS.

Streamlined Compliance Reviews

When can I perform a streamlined Compliance Review?

If the motor carrier has had a non-streamlined CR in the previous 24 months, you, with approval from the Division Administrator/State Director, have the option of conducting a

streamlined CR in lieu of a full CR. Additionally, a streamlined CR may be conducted during an enforcement follow-up and as the result of a significant occurrence. A significant occurrence could be a significant crash, egregious violations found during roadside inspections, etc.

During your investigation, you have the discretion at anytime to expand to a full CR based on your initial findings.

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1.4.1.14 Illustration G-1 Sample Contact Letter and Questionnaire

**U.S. Department of Transportation
Federal Motor Carrier Safety Administration
0000 Adams Street
Any Town, State 66666**

(Area code) (Your phone number) Voice (area code) (your fax number) Fax

November 4, 2004

Dear Sir or Madam:

This letter serves to confirm our telephone conversation on October 2, 2003. I will be at your location this (day of the week) to review your transportation operation.

During the review I will need access to the following records or documents at the time of the visit.

- List of drivers used in the past 365 days including date of hire, date of termination, CDL state and license # and date of birth.
- Driver qualification files.
- Controlled substance testing records for the past 365 days, results and summaries.
- Driver payroll records.
- Driver records of duty status (logs, time records, etc) for the past 6 months.
- Drivers trip reports and expense records for the past 6 months, including scale and fuel receipts (Comdata, EFS) and all associated documents.
- Motor vehicle accident files for the past 12 months.
- List of equipment (company #, license #, state, year, make, GVWR).
- Lease agreements and associated maintenance records if applicable.
- Vehicle Maintenance records.
- Driver vehicle inspection reports for the last 90 days (DVIRs).
- All roadside inspections for the past 365 days.
- Company gross revenue for the last full year.
- Total fleet mileage for the last year.
- A copy of your MCS-90, endorsement for motor carrier policies of insurance for the current policy.
- Insurance claim information for past 365 days.

Accompanying this letter is a survey for you to complete. Please fill out the survey and have it available upon my arrival at your location.

Your cooperation in making the above mentioned documents available at the time of the review would expedite the review and minimize any disruption to your business.

If you have any questions, please feel free to contact me at the address or telephone number listed above.

Sincerely,

John/Jane Doe
Title

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
Any Town, State
Phone
Fax

Investigation Questionnaire

Carrier Information

On the following two pages fill in the requested information as it applies to your company.

Corporate Officer(s) Names

Corporate Titles

Gross Revenue (last complete fiscal year) \$

Period ending /
/

Total Fleet Mileage (last 12 months)

Insurance Company
Agent Contact Person
Telephone Number
Coverage

Enter the number of vehicles your fleet has for each category below.

Straight Trucks	Truck Tractors	Trailers	HM Cargo Tank Trucks	HM Cargo Tank Trailers	School Buses	Motor Coaches
------------------------	-----------------------	-----------------	-----------------------------	-------------------------------	---------------------	----------------------

Owned
Leased
Trip Leased

Driver Information

	Interstate	Intrastate	# CDL Drivers	
100 air-mile radius			Avg. # trip lease driver per month	
> 100 air-mile radius			Average # CDL drivers last year	
Number of CDL Drivers On	Jan.1:	April 1:	July 1:	Oct.1:

CONTROLLED SUBSTANCES AND ALCOHOL TESTING INFORMATION

Name of MRO
Address
Telephone Number

Controlled Substances and Alcohol Testing Consortium (If Any)

Name
Address
Telephone Number

Does your company have a copy of the Federal Motor Carrier Safety Regulations?

Who in your company is responsible for monitoring drivers hours of service?

Who in your company hires drivers? _____

Who is responsible for evaluating and maintaining driver qualification files?

Who provided the previous information?

Name
Title

1.4.2 Part 382 - Controlled Substances/Alcohol Use and Testing

[Investigative Procedures](#)

[CAPRI Procedures](#)

[Enforcement Procedures](#)

1.4.2.1 Part 382 - Investigative Procedures

In your review of compliance with Part 382, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable hazardous material) and passengers.

- [Pre-Employment Tests](#)
- [Post-Accident Testing](#)
- [Random Testing](#)
- [Reasonable Suspicion](#)
- [Drivers with Positive Tests](#)
- [Drug and Alcohol Policies](#)
- [Private Motor Carriers of Passengers](#)

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Following this review, you should:

- Cite violations, and if warranted,
- Document counts for enforcement

What should my request for a driver list include?

If a driver list was not requested before the compliance review, or during the opening interview, you should request a list of drivers employed in the past 12 months, and the date they were hired and/or terminated. The list will need to be verified. You should verify the accuracy and completeness of the list by reviewing the company profile, payroll records, dispatch records, bills of lading, and/or other transportation or shipping documents.

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What should I ask for when requesting a list of controlled substances and alcohol tests?

You should request a list of all controlled substance and alcohol tests performed during the past 12 months. The list should include the drivers' names, the type of controlled substance and/or alcohol test, and the test result. You may also request the drivers' social security number to verify against other controlled substance and alcohol testing records.

What procedures should I follow if a carrier has made no attempt to implement a program required by Part 382?

First-time Compliance Review - You should cite the motor carrier for Section 382.115(a) - Failing to implement an alcohol and/or controlled substances testing program.

Subsequent Compliance Reviews - You should cite the motor carrier for each individual violation of Part 40 and 382 they have violated.

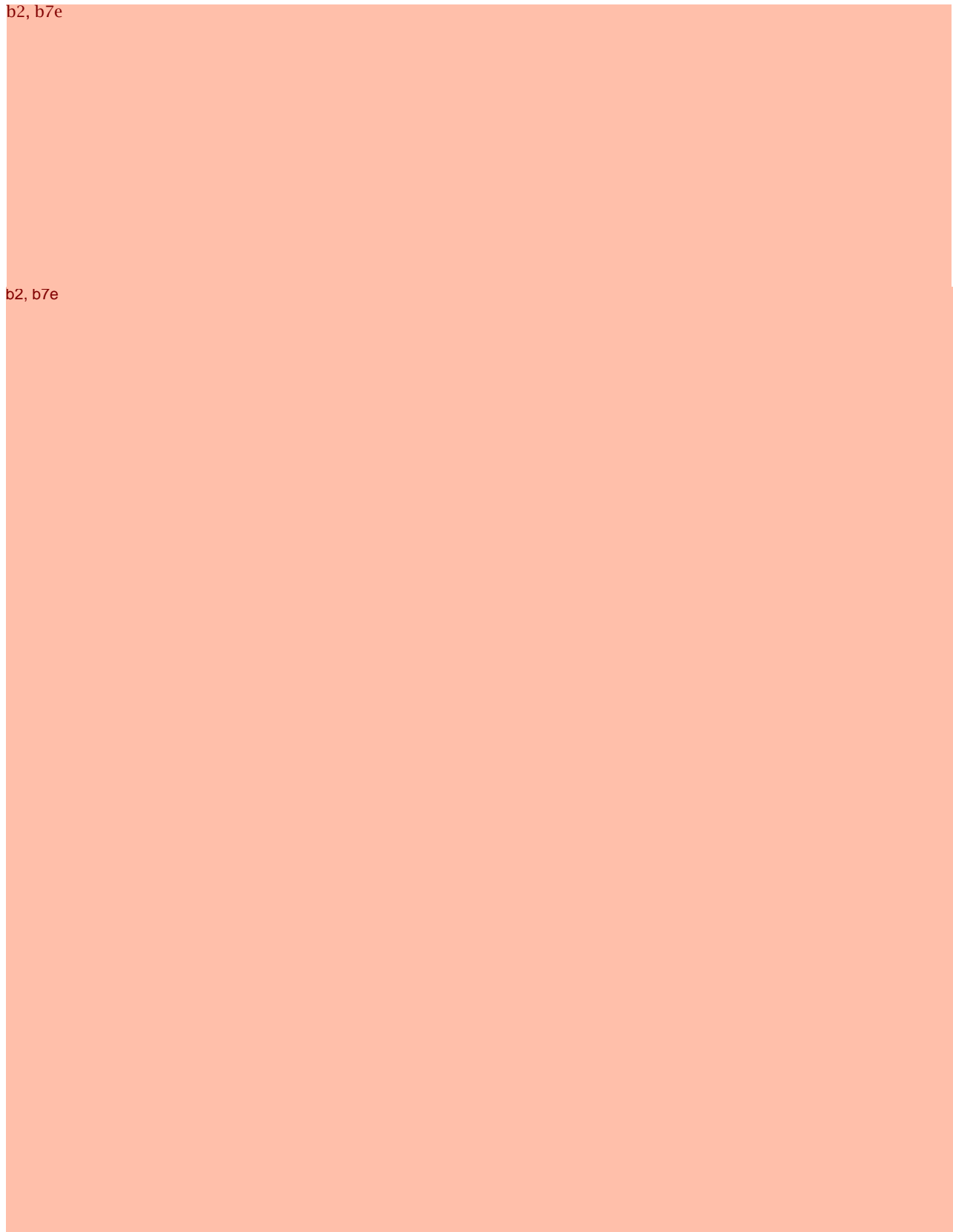
Part 382 -Pre-Employment Tests

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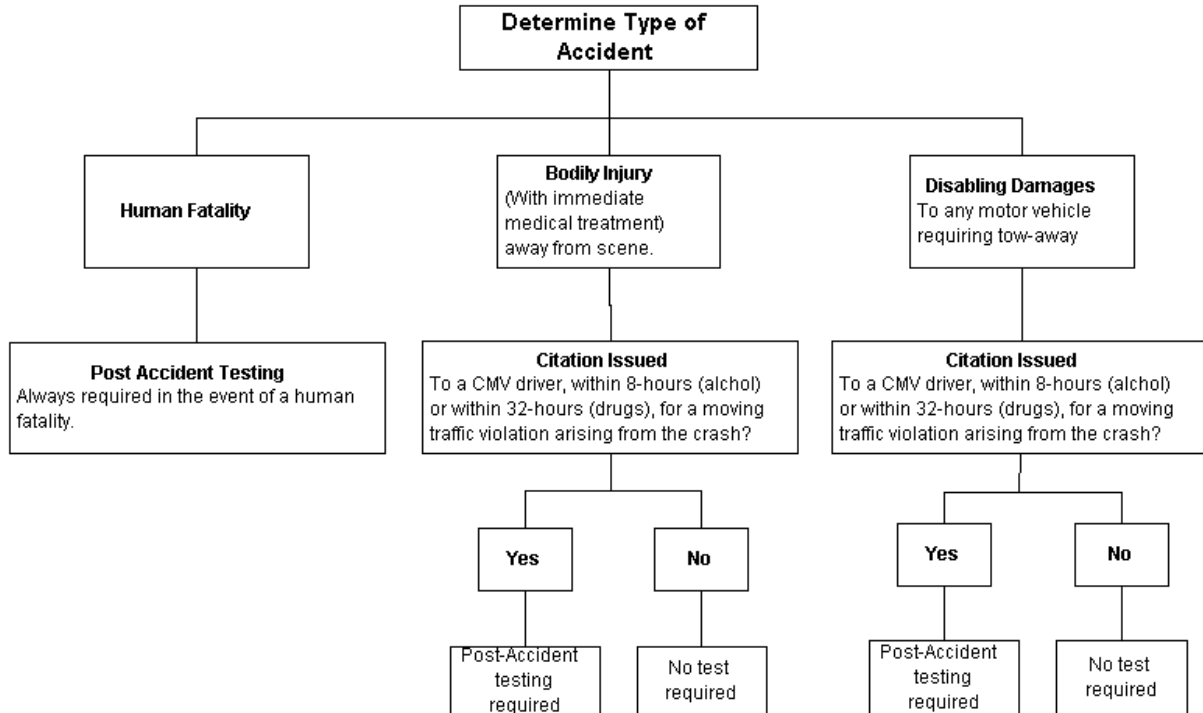
 **Part 382 -Post-Accident Testing**

What procedures should I use for reviewing post-accident test results?

Verify that all drivers required to submit to post-accident controlled substances and alcohol tests are tested as required by Section 382.303(c). This applies to all recordable accidents within the last 365 days. Validate carrier’s reason for failing to complete tests within the required time limits.

When is Post-Accident Testing required?

The following flow chart is a quick reference for determining when post-accident testing is required:



Description of Flow Chart

Part 382 -Random Testing

What are the sampling requirements for random testing?

The number of required random tests in a calendar year is based upon the average number of drivers subject to be tested by the employer and the applicable minimum annual percentage rate for random testing. If there are large fluctuations in the number of drivers subject to be tested by the employer throughout the year without any clear indication of the average number of driver positions, the necessary number of random tests is calculated as follows:

Formulas	
Controlled Substances	Alcohol

$T = .5 \times D/P$	$T = .1 \times D/P$
<p>T = Minimum random tests. D= Number of drivers subject to be tested by employer or employer's C/TPA. P = Number of test periods per year.</p>	

Examples - Annual Test Rates	
Controlled Substances	Alcohol
Quarter 1 = 10 Drivers Quarter 2 = 30 Drivers Quarter 3 = 300 Drivers Quarter 4 = <u>10 Drivers</u> 350 Drivers	Quarter 1 = 10 Drivers Quarter 2 = 30 Drivers Quarter 3 = 300 Drivers Quarter 4 = <u>10 Drivers</u> 350 Drivers
$T = .5 \times D/P$ $T = .5 \times 350/4$ $T = .5 \times 87.5$ $T = 43.73$ (Round up) $T = 44$	$T = .1 \times D/P$ $T = .1 \times 350/4$ $T = .1 \times 87.5$ $T = 8.75$ (Round up) $T = 9$
How many drivers have to be tested in order to meet the 50% CST rate for the year? The answer is 44, which must be reasonably spread throughout the year.	How many drivers have to be tested in order to meet the 10% Alcohol rate for the year? The answer is 9, which must be reasonably spread throughout the year.

How do I calculate the number of tests that need to be completed for a testing period?

The formula above can also be used to determine the number of tests to be conducted per testing period. The following table illustrates how the number of tests can be established per testing period.

Examples -Test Period Rate (Controlled Substances)			
Carrier with four testing periods per year using drivers subject to be tested by employer or employer's C/TPA.			
Testing Period	Number of Drivers	Formula	Drivers to be tested during period.
1	10	$T = .5 \times 10/4$	1
2	30	$T = .5 \times 30/4$	4
3	300	$T = .5 \times 300/4$	38
4	10	$T = .5 \times 10/4$	1
Annual Total			44
Carrier with six testing periods per year using drivers subject to be tested by employer or employer's C/TPA.			
1	10	$T = .5 \times 10/6$	1
2	30	$T = .5 \times 30/6$	3
3	300	$T = .5 \times 300/6$	25
4	10	$T = .5 \times 10/6$	1
5	20	$T = .5 \times 20/6$	2
6	10	$T = .5 \times 10/6$	1
Annual Total			33*

*The annual rate required of this carrier is 32 Random Tests. Using this formula the carrier would actually have one more than needed and therefore may drop one of the tests. It would be inappropriate to drop a test in periods 1, 4, or 6 as the carrier would not meet the requirement to spread the tests evenly.

Description Examples=Test Period Rate

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Part 382 -Reasonable Suspicion

What are the procedures I should use if reasonable suspicion tests were conducted?

Review all reasonable suspicion tests that have been conducted and ensure all supervisors have received the proper training. Review all required documentation that a trained supervisor is required to maintain in connection with a reasonable suspicion test performed.

Part 382 -Drivers with Positive Tests

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Part 382 -Drug and Alcohol Policies

Ensure employer's controlled substances and alcohol testing policies contain all information required by 382.60(b)1-11, and a certificate of policy is maintained for each cited driver.

Part 382 -Private Motor Carriers of Passengers

 **Are Private Motor Carriers of Passengers(business and nonbusiness) subject to the testing and record keeping requirements of Part 382?**

Private Motor Carriers of Passengers (business and nonbusiness) are required to meet the testing and record keeping requirements of this part. Due to the nature of their business, passenger carriers tend to utilize part-time, intermittent, and casual drivers on a more frequent basis than other types of motor carrier operations. You should pay particular attention to ensure that all drivers are participating in a controlled substances and alcohol testing program.

1.4.2.2 Part 382 - CAPRI Procedures

Once you have completed your investigation of compliance with Part 382, you should use the following guidelines to assist in the completion of Part B - Violations Tab of the CAPRI software.

How do I record the violations of Part 382 critical and/or acute regulations?

Part 382 -Acute and Critical Regulations

Citation	Type	Description
382.115(a)	Acute	Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier). NOTE: There must be no attempt to comply with any part of 382 or 40. Number Checked: One program.
382.201	Acute	Using a driver known to have an alcohol concentration of 0.04 or greater. Number Checked: The number of drivers who were found to have an alcohol concentration of 0.04 or greater.
382.211	Acute	Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382. Number checked: The number of drivers who refused to submit to an

		alcohol or controlled substances test required under part 382.
382.213(b)	Acute	Using a driver known to have used a controlled substance. Number checked: The number of drivers known to have used a controlled substance.
382.215	Acute	Using a driver known to have tested positive for a controlled substance. Number checked: The number of drivers who tested positive.
382.301(a)	Critical	Using a driver before the motor carrier has received a negative pre-employment controlled substance test result. Number checked: The number of drivers required to be pre-employment tested.
382.303(a)	Critical	Failing to conduct post accident alcohol testing for each surviving driver. Number checked: Number of drivers required to be post- accident tested.
382.303(b)	Critical	Failing to conduct post accident controlled substances testing for each surviving driver. Number checked: Number of drivers required to be post- accident tested.
382.305	Acute	Failing to implement a random controlled substances and/or an alcohol-testing program. Number checked: One program.

382.305(b)(1)	Critical	Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions. Number checked: The number of tests required to meet applicable rate.
382.305(b)(2)	Critical	Failing to conduct random controlled substances testing at an annual rate of not less than the applicable rate of the average number of driver positions. Number checked: The number of tests required to meet applicable rate.
382.309(a)	Acute	Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. Number checked: Number of drivers who were required to undergo a return-to-duty alcohol test.
382.309(b)	Acute	Using a driver who has not undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances. Number checked: Number of drivers who were required to undergo a return-to-duty controlled substances test.
382.503	Critical	Allowing a driver to perform safety sensitive function, after engaging in conduct prohibited by Subpart B, without being evaluated by a substances abuse

		<p>professional, as required by 382.605.</p> <p>Number checked: Number of drivers who were required to be evaluated by a SAP.</p>
382.505(a)	Acute	<p>Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater, but less than 0.04.</p> <p>Number checked: Number of drivers who tested positive for alcohol with a concentration of 0.02 or greater but less than 0.04.</p>
382.605(c)(1)	Acute	<p>Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02 or with verified negative test result, after engaging in conduct prohibited by part 382 subpart B.</p> <p>Number checked: Number of drivers required to undergo this type of test.</p>
382.605(c)(2)(ii)	Critical	<p>Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and controlled substance tests in the first 12 months following the driver's return to duty.</p> <p>Number checked: Number of drivers referred to a SAP.</p>

How do I ensure I am using the appropriate cite when I discover the carrier has used a driver who tested positive?

Because of the impact these violations may have on a motor carrier's safety rating, it is important to ensure the most appropriate cite is listed in Part B of your review. The Drug and Alcohol Technical Advisory Group (TAG) recommends the following:

- 382.201 (Acute): Limited to situations where the carrier knows the driver currently has

- an alcohol concentration of 0.04 or greater and uses the driver anyway.
- 382.211 (Acute): Must be cited for a carrier that uses a driver who has refused to submit to a required test, when no part of the referral process has been followed.
 - 382.213(b)(Acute): To be used for situations involving actual knowledge, as defined by 382.107, when no part of the referral process has been followed.
 - 382.215 (Acute): To be used for situations involving a driver with a positive, adulterated, or substituted test, when no part of the referral process has been followed.
 - 382.503 (Critical): To be used in place of 382.211, 382.213(b), or 382.215 when the carrier has made some effort to follow the referral process, but used the driver before all the steps were completed.

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1.4.3 Part 383 - Commercial Driver's License (CDL) Standards

[Investigative Procedures](#)

[CAPRI Procedures](#)

[Enforcement Procedures](#)

1.4.3.1 Part 383 - Investigative Procedures

■ In your review of compliance with Part 383, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable hazardous material) and passengers.

■ [CDL Status](#)

[Mexican Licencia Federal](#)

[CDL Problems](#)

What procedures should I follow during my investigation of Part 383?

- Request a driver list,
- Select drivers' for CDLIS checks according to Part 391 DQ file sampling criteria
- Perform drivers' license checks

Following this review, you should:

- Cite violations, and if warranted,
- Document counts for enforcement

■ ***Part 383 - CDL Status***

How do I check the license status and driving records of drivers?

You must verify driver's CDL license history/status through CDLIS or other acceptable methods (e.g. NLETS, NCIC, or State Licensing System). You should also verify that drivers have the proper class license and endorsements, and then check for any disqualifying

offenses. These verifications should be done on all drivers who are selected during your sampling of Part 391, Driver Qualification Files.

What do I need to do if I find a revoked or suspended CDL?

You need to verify with the State-licensing agency the status of the CDL.

 ***Part 383 - Mexican Licencia Federal***

Am I required to check the status of a Mexican Licencia Federal?

There is no requirement to check with the licensing agency in Mexico to verify the status of the Mexican Licencia Federal.

If a Mexican Licencia Federal is not in the system what should I do?

- **First**, you should cite the motor carrier and inform it that the driver must contact the local SCT (Secretaria De Comunicaciones y Transportes) office to ensure the license is in the system.
- **Second**, you should obtain documentation for a possible enforcement action.
- **Third**, you should conduct a follow-up CDLIS check within 3 working days. If the license is still not in the system, you should initiate an enforcement action.

Can I call the local Secretaria De Comunicaciones y Transportes office to verify a Mexican Licencia Federal?

No. Calling the local SCT office is no longer permitted for verification of a Licencia Federal.

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1.4.3.2 Part 383 - CAPRI Procedures

Once you have completed your investigation of compliance with Part 383, you should use the following guidelines to assist in the completion of Part B - Violations Tab of the CAPRI software.

How do I record the violations of Part 383 critical and/or acute regulations?

**Part
383 - Acute and Critical Regulations**

Citation	Type	Description
383.23(a)	Critical	Operating a commercial motor vehicle without a commercial driver's license. <i>Number Checked: Number of drivers checked who are required to have a valid CDL.</i>
383.37(a)	Acute	Allowing, requiring, permitting, or authorizing an employee who is disqualified to operate a commercial motor vehicle or whose commercial driver's license is suspended, revoked, or canceled by a State or who is disqualified to operate a commercial motor vehicle. *NOTE: Enforcement recommended only when suspended, revoked, canceled, disqualified for a safety-related reason. Safety-related reasons include, but are not limited to, a disqualifying offense, serious traffic violation, multiple-moving

		<p>violations, etc.</p> <p><i>Number Checked: Number of drivers checked who are required to have a valid CDL.</i></p>
383.37(b)	Acute	<p>Allowing, requiring, permitting or authorizing an employee with more than one commercial driver's license to operate a commercial motor vehicle.</p> <p><i>Number Checked: Number of drivers checked who are required to have a valid CDL.</i></p>
383.51(a)	Acute	<p>Allowing, requiring, permitting or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle.</p> <p><i>Number Checked: Number of drivers checked who are required to have a valid CDL.</i></p>

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1.4.4 Part 387 - Insurance Requirements


[Investigative Procedures](#)

[CAPRI Procedures](#)

[Enforcement Procedures](#)

1.4.4.1 Part 387 - Investigative Procedures

In your review of compliance with Part 387, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable hazardous material) and passengers.

 [Financial Responsibility](#)
[Financial Responsibility – Mexico-domiciled Carriers](#)
[Financial Responsibility Problems](#)
[Cargo Insurance](#)

What procedures should I follow during my investigation of Part 387?

Your investigation of Part 387 should:

- Verify the motor carrier is subject to Part 387,
- Review documentation proving the motor carrier meets its financial responsibility requirements,

Following this review, you should:

- Cite violations, and if warranted,
- Document counts for enforcement

Part 387 - Financial Responsibility

How do I verify the carrier's compliance with 387?

- **First**, if you have not already done so during your pre-investigation activities, you should check the Licensing & Insurance Web site (<http://li-public.fmcsa.dot.gov/>) for the motor carrier's insurance and authority status (if applicable).
- **Second**, you should review the carrier's insurance policy or self-insurance authorization. Be sure to check within the insurance policy for a valid MCS-90/90B Endorsement, MCS-82/82B, or self-insurance authorization, which should reflect a complete signed document with the appropriate levels of financial responsibility in effect. To expedite this process, you should request the carrier to obtain a copy of their MCS-90 prior to your review, so that it is available when you arrive at the company.

- **Third**, if you cannot locate the MCS-90/90B Endorsement within the motor carrier's insurance policy, request the motor carrier to contact its insurance company, so that they may be able to send a facsimile of the MCS-90/90B Endorsement.




Part 387 - Are the insurance requirements any different for motor carriers of passengers?

Yes. There are differences in the minimum levels of insurance, and passenger carriers are required to maintain a MCS-**90B** Endorsement.



Part 387 - Financial Responsibility – Mexico-domiciled Carriers

Are the insurance requirements any different for Mexico-domiciled/Canadian motor carriers?

 The levels of financial responsibility are the same for all carriers operating in the U.S., however there are some additional requirements for Canada and Mexico-domiciled motor carriers operating in the U.S.

- Mexico-domiciled private motor carriers are required to meet the minimum levels of financial responsibility regardless of the commodity transported or the size of the vehicle. The levels of financial responsibility for Mexico-domiciled private motor carriers can be found in Section 387.301.
- Additionally, Mexico-domiciled private motor carriers that operate fleets with vehicles under 10,000 pounds are subject to the minimum levels of financial responsibility in Section 387.303.
- Canada and Mexico-domiciled motor carriers must carry in each vehicle operating in the U.S. proof of the required financial responsibility (Forms MCS-90 or MCS-82) used by the motor carrier as required by Part 387.7(f)
- Mexico-domiciled motor carriers must carry in each vehicle operating in the U.S. an insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the insurance coverage as required by Part 387.303(b)(4)(iii)
- A Mexico-domiciled motor carrier that operates solely within the commercial zone may take advantage of the exception in Section 387.7(b)(3). This exception allows Mexico-domiciled carriers operating solely along the border commercial zones to meet their financial responsibility requirements through purchase of trip insurance, as opposed to purchase of continuous insurance coverage.



Part 387 - Financial Responsibility Problems

What if I discover the motor carrier does not have in effect the required amount of financial responsibility for its type of operation?

You should cite the motor carrier on the CAPRI Software Part-B Violations Tab for a violation of 387.7(a) - "Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage," or the equivalent foreign carrier or motorcoach cite. Inform **the motor carrier officials that they must cease operations until they have the appropriate level of insurance on file.** You should include in a recommendation in CAPRI Software Part B-Recommendations the same notice to the motor

carrier, and have the motor carrier initial near the recommendation of this notice to cease operations. You should also gather the documentation you will need to initiate an enforcement action for this violation. You should also follow up with the carrier after the review has ended, to ensure they have obtained the required levels of liability insurance.

What if I discover the motor carrier has in effect the required amount of financial responsibility, but cannot produce the MCS 90/90B Endorsement by the time I have completed my investigation?

You should cite the motor carrier on the CAPRI software Part-B Violations Tab for a violation of 387.7(d)(1) - "Failing to maintain at principal place of business the required proof of financial responsibility," or the equivalent foreign carrier or motorcoach cite.

What if I discover that a "for-hire" motor carrier of passengers or property, does not have in effect the required amount of financial responsibility, and cannot produce the MCS-90/90B Endorsement by the time I have completed my investigation?


You should cite the motor carrier on the CAPRI Software Part-B Violations Tab for a violation of 387.7(a) - "Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. **Inform the motor carrier officials that they must cease operations until they have the appropriate level of insurance on file.**

What if I am conducting an investigation on a motor carrier who is self-insured, and their proposed safety rating is going to be conditional or unsatisfactory?

- You should contact the highest-ranking motor carrier official, and notify them of the proposed safety rating.
- You should also notify them their self-insurance authority will be invalid 30 calendar days after the issuance of a final safety rating of conditional or unsatisfactory.
- After closing out your investigation with the motor carrier official, you should immediately notify your Division Administrator (DA)/State Director (SD) that you have completed an investigation on a "For-Hire Self-Insured Motor Carrier" and its proposed safety rating is conditional or unsatisfactory.
- The DA/SD should then contact the FMCSA Commercial Enforcement Division and notify them of the situation.

Is an "insurance filing" different from the MCS-90/90B?

Yes, an insurance filing is different from a MCS-90/90B. The motor carrier's insurance company makes an insurance filing on a Form BMC-91 or BMC-91X. The insurance filing is made and required to be on file with the FMCSA, Commercial Enforcement Division. You should verify insurance filings during the preparation for the compliance review, or during the compliance review, on for-hire motor carriers of regulated commodities.

 **NOTE:** There is no requirement for Mexico-domiciled motor carriers to make an insurance filing at this time.

 **Part 387 - Cargo Insurance**

Who is required to have cargo insurance?

For-hire common carriers are required to have cargo insurance. Cargo insurance must be



on file with the FMCSA and can be verified through Licensing & Insurance Web site. (<http://li-public.fmcsa.dot.gov/>).

1.4.4.2 Part 387 - CAPRI Procedures

Once you have completed your investigation of compliance with Part 387, you should use the following guidelines to assist in the completion of Part B - Violations Tab of the CAPRI software.

How do I record violations of Part 387 critical/acute regulations?

Part 387 - Acute and Critical Regulations

Citation	Type	Description
387.7(a)	Acute	Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. Number Checked: One.
387.7(d)	Critical	Failing to maintain at principal place of business required proof-of-financial responsibility. Number Checked: Number of subject trips made without adequate levels of financial responsibility in effect.
387.31(a) 	Acute	Operating a passenger-carrying vehicle without having in effect the required minimum financial responsibility coverage. Number Checked: One.
387.31(d) 	Critical	Failing to maintain at principal place of business required proof of financial responsibility for passenger carrying vehicles. Number Checked: Number of subject trips made without adequate levels of financial responsibility in effect.

1.4.4.3 Part 387 - Enforcement Procedures

Once you have entered the violations discovered into Part B of the CAPRI software and have decided to initiate an enforcement action for the Part 387 violations, you should use the following guidelines when submitting an enforcement report for Part 387 violations.

[Documentation](#)

Part 387 - Documentation

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1.4.5 Part 390 - General Requirements

[Investigative Procedures](#)

[CAPRI Procedures](#)

[Enforcement Procedures](#)

1.4.5.1 Part 390 - Investigative Procedures

In your review of compliance with Part 390, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable hazardous material) and passengers.

[Accidents](#)

[Markings](#)

[Biennial Update](#)

What procedures should I follow during my investigation of Part 390?

Your investigation of Part 390 should begin by reviewing:

- Accident Information (a key step in establishing sampling requirements of drivers and/or vehicles during your review)
- Marking of vehicles, and
- Biennial update of the MCS-150.

Following this review, you should:

- Cite violations, and if warranted,
- Document counts for enforcement

 ***Part 390 - Accidents***

What is an accident?

An accident is an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

- A fatality (any injury which results in the death of a person at the time of the motor vehicle accident or within 30 days of the accident);
- Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

The term accident does not include:

- An occurrence involving only boarding and alighting from a stationary motor vehicle; or
- An occurrence involving only the loading or unloading of cargo.

What is the time period I should look at during my review of accidents?

Your review of the motor carrier's intrastate and interstate recordable accidents should cover the 12-month period before the CR.

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What information should I look for when a carrier is required to maintain an accident register?

You should determine whether the motor carrier's annual accident register includes all required interstate recordable accident data required by Sections 390.15(b)(1)(i-vi) and 390.15(b)(2).

Am I required to compute the motor carrier's interstate recordable accident rate?

No, the CAPRI software will compute the motor carrier's recordable accident rate (factor 6) for you. However, if manual calculation is necessary, multiply the motor carrier's number of recordable interstate accidents in the previous twelve months by 1,000,000. Then divide that result by the motor carrier's fleet mileage during the previous twelve months. For example, a motor carrier had two recordable interstate accidents and a fleet mileage of 3,000,000 during the previous 12 months. The motor carrier's recordable accident rate is $(2 \times 1,000,000) / 3,000,000$ which equals 0.67.

🇨🇦 🇲🇪 Are accidents that occur in Canada or Mexico calculated in the interstate recordable accident rate?

All recordable accidents which occur in the United States, or as part of an interstate trip to or from the United States are counted in the interstate recordable accident rate.

What if I discover interstate recordable accidents not on the company profile during my CR?

These accidents should be included when determining the carrier's accident rate for the CR. You should obtain a copy of the accident information, and submit the information to the DA or designee. The information will then be forwarded to the appropriate Division Office for handling.

What do I do if intrastate accidents are found on the profile?

These accidents are not to be used to calculate the carrier's interstate recordable accident rate.

What if I discover any accidents on the motor company's profile that do not belong to the carrier?

These accidents should not be included in the accident rate computation. Advise the motor carrier of the error(s) and explain that they must contact DataQ's to resolve the issue.

The DataQ's Web site is located at: <http://dataqs.fmcsa.dot.gov>

Part 390 - Markings

How do I ensure the motor carrier has properly marked all of its vehicles?

If possible or available, visually inspect the vehicles for proper markings.

Part 390 - Biennial Update

How do I verify the company has submitted the biennial update of the MCS-150 as

required?

You should ask the motor carrier if it has made the required update filing and verify an affirmative response. Utilizing only the date shown in SAFER is NOT sufficient evidence to cite a carrier for failing to submit the required biennial update. Remember: If a motor carrier registers its vehicles in a PRISM state, it may be exempt from this requirement. Please see 390.19(g) for more information.

Updated: 7/28/2008

1.4.5.2 Part 390 - CAPRI Procedures

Once you have completed your investigation of compliance with Part 390, you should use the following guidelines to assist in the completion of Part B - Violations Tab of the CAPRI software.

How do I record violations of Part 390 critical/acute regulations?**Part 390 - Acute and Critical Regulations**

Citation	Type	Description
390.15(b) (2)	Critical	<p>Failing to maintain copies of all accident reports required by the State or other governmental entities or insurers.</p> <p>Number Checked: Number of interstate recordable accidents, where the State or other governmental entities or insurer requires a copy of the accident report to be maintained.</p>
390.35	Acute	<p>Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records.</p> <p>False Records: In this scenario, the number checked is the number of records checked in which false records were discovered. (Example: If you check 5 maintenance records, and you discover that a mechanic has falsified 3 maintenance reports, it would be written as 3 violations discovered of 5 records checked)</p> <p>False Statements: In this scenario, the number checked is the number of statements found to be false ((Example: If you discover that a motor carrier representative or driver has submitted a falsified document (<i>other than medical examiner's certificate and records of duty status</i>) this is generally written as 1 violation discovered of 1 false statement checked))</p>

1.4.5.3 Part 390 - Enforcement Procedures

Once you have entered the violations discovered into Part B of the CAPRI software and have decided to initiate an enforcement action for the Part 390 violations, you should use the following guidelines when submitting an enforcement report for Part 390 violations.

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1.4.6 Part 391 - Qualification of Drivers

[Investigative Procedures](#)

[CAPRI Procedures](#)

[Enforcement Procedures](#)

1.4.6.1 Part 391 - Investigative Procedures

In your review of compliance with Part 391, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable hazardous material) and passengers.

[Request Driver Lists](#)

[Determine Driver Qualification File Sample](#)

[Select Driver Qualification Files](#)

[Review Driver Qualification Files](#)

[Driver Qualification Problems](#)

What procedures should I follow during my investigation of compliance with Part 391?

Your investigation of Part 391 should consist of:

- Requesting a drivers' list,
- Sampling driver qualification files,
- Selecting files,
- Reviewing files.

Following this review, you should:

- Cite violations, and if warranted,
- Document counts for enforcement

Part 391 - Request Driver Lists

What should my request for a driver list include?

If a driver list was not requested before the compliance review or during the opening interview, you should request a list of drivers employed in the last 12 months, and the date they were hired and/or terminated. The list will need to be verified. You should verify the accuracy and completeness of the list by reviewing the company profile, payroll records, dispatch records, bills of lading, and/or other transportation or shipping documents.

Part 391 - Determine Driver Qualification File Sample

What are the sampling requirements for the minimum number of driver qualification

files to be reviewed?

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Part 391 - Select Driver Qualification Files

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Part 391 - Review Driver Qualification Files


What are the driver qualification file documents I should review?

The motor carrier is required to prepare and maintain driver qualification files in accordance with Section 391.51(b)(1-8). Below you will find guidance when reviewing each driver qualification file document:

- **Employment Application:** You should ensure the employment application contains all the elements required by Section 391.21(b), all fields are completed or noted as non-applicable, and the application is signed by the driver/applicant. **NOTE:** Applications for drivers of vehicles requiring CDLs (Part 383) must show previous 10 years employment history.
- **Previous Employment History Inquiry:** You should ensure the motor carrier has contacted the driver's/applicant's previous employers by means of either written document or a note of telephonic employment verification within 30 days of date of hire. The motor carrier must make a good faith effort to contact the driver's/applicant's previous employers regarding employment history, and document its good faith effort.
- **Copy of Driver's License History Inquiry:** You should ensure the motor carrier has contacted each state agency where the driver/applicant holds an operators license, **AND** obtained a copy of the driver's license history for the previous 3 years within 30 days of date of hire.
- **Road Test/Certificate or Equivalent (Copy of Valid CDL):** You should ensure the motor carrier has performed a road test for each driver/applicant on a company vehicle, documented the results of the road test, and issued a road test certificate. **The motor carrier may accept a copy of a valid Commercial Driver's License in lieu of the road test/certificate requirement.**

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 For Mexico-domiciled carriers, the Mexican Licencia Federal serves as proof that a driver is physically qualified. For Canadian carriers, the Canadian CDL serves as proof that a driver is physically qualified. Check the company profile records to verify if any driver(s) have been placed OOS for an invalid Mexican Licencia Federal or Canadian CDL, (ask the carrier official why the license was invalidated).

- **Annual Review of Driver Record Inquiry (a.k.a. Annual Driver's License Check):** If the driver has been employed a year or more, you should ensure the motor carrier has requested and obtained a copy of the annual driver's license check from the state agency where the driver holds a license.
- **Annual List/Certification of Violations of Motor Vehicle Laws:** If the driver has been employed a year or more, you should ensure the motor carrier has requested and obtained the annual list/certification of violations of all motor vehicle laws (except parking) from each driver.
- **Annual Review of Driver's Qualification:** If the driver has been employed a year or more, you should ensure the motor carrier has performed the annual review of the driver, and has a document reflecting the annual review was performed. **NOTE:** As you perform your investigation, you may wish to inform the motor carrier to perform the Annual Review for each driver after obtaining and reviewing the Annual Driver's License Check and the Annual List/Certification of Violations of Motor Vehicle Laws. By performing the Annual Review in this manner, the motor carrier will ensure the Annual List/Certification of Violations of Motor Vehicle Laws submitted by the driver reflects the same data as the Annual Driver's License Check obtained from the state of license.

Proper Citations: You must determine whether the document was never prepared, or that the document was prepared and not maintained, before you can choose the correct citation.

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1.4.6.2 Part 391 - CAPRI Procedures

Once you have completed your investigation of compliance with Part 391, you should use the following guidelines to assist in the completion of Part B - Violations Tab of the CAPRI software.

How should I cite a violation where the carrier fails to have a driver qualification file on a specific driver?

Section 391.51 requires a motor carrier to maintain a driver qualification file for each driver it employs, and Section 391.51(b)(1-8) specifies all documents that must be included within the driver qualification file. **For that reason, it is recommended you cite driver qualification file violations under the individual document cites listed within Section 391.51(b)(1-8).**

How should I cite a violation of a false medical certificate?

All false medical violations cited during a compliance review should be cited as a violation of Section 390.35 with a secondary cite of Section 391.45. As in this case, the violation should be - "Fraudulently or intentionally making a false entry on a required medical examiner's certificate."

How do I record violations of Part 391 critical/acute regulations?

You should record the number checked as follows:

Part 391 - Acute and Critical Violations

Citation	Type	Description
391.11(b)(4)	Acute	Using a physically unqualified driver. Number checked: Number of interstate drivers sampled and required to be physically qualified.
391.15(a)	Acute	Using a disqualified driver. Number checked: Number of interstate drivers sampled and required to be qualified.
391.45(a)	Critical	Using a driver not medically examined and certified. Number checked: Number of interstate drivers sampled and required to be medically certified.
391.45(b)(1)	Critical	Using a driver not medically examined and certified during the preceding 24 months. Number checked: Number of interstate drivers sampled and required to be medically certified
391.51(a)	Critical	Failing to maintain a driver qualification file on each driver employed. Number checked: Number of interstate drivers sampled and required to have a DQ file.
391.51(b)(2)	Critical	Failing to maintain inquiries into driver's driving record in driver's qualification file. Number checked: Number of interstate drivers sampled and required to maintain a driver's driving record in their DQ file per 391.23(a)(1).

391.51(b) (7)	Critical	Failing to maintain medical examiner's certificate in driver's qualification file. Number checked: Number of interstate drivers sampled and required to maintain a medical examiner's certificates in their DQ file per 391.41(a).
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1.4.7 Part 392 - Driving of Motor Vehicles

[Investigative Procedures](#)

[CAPRI Procedures](#)

[Enforcement Procedures](#)

1.4.7.1 Part 392 -Investigative Procedures

When determining compliance with Part 392, you should use the following guidelines to assist in your investigation of motor carriers of property (including placardable hazardous material) and passengers.

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1.4.7.2 Part 392 -CAPRI Procedures

Once you have completed your investigation of compliance with Part 392, you should use the following guidelines to assist in the completion of Part B - Violations Tab of the CAPRI software.

How do I record violations of Part 392 critical/acute regulations?

You should record the number checked as follows:

Part 392 - Acute and Critical Regulations

Citation	Type	Description
392.2	Critical	Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. Number checked: Number of interstate trips checked for compliance with the law, ordinance, or regulation violated.
392.4(b)	Acute	Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely

		<p>operating a motor vehicle. Note - Enforcement action is recommended when the motor carrier had knowledge of the violation.</p> <p>Number checked: Number of drivers who were found to be under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle.</p>
392.5(b) (1)	Acute	<p>Requiring or permitting a driver to violate 392.5(a), which provides that no driver shall use alcohol or be under the influence of alcohol, within 4 hours before going on duty or operating, or having physical control of, a commercial motor vehicle; or have any measured alcohol concentration or detected presence of alcohol, while on duty, or in physical control of a commercial motor vehicle. Note - Enforcement action is recommended when the motor carrier had knowledge of the violation</p> <p>Number checked: Number of drivers found to have been under the influence of or in possession of, an intoxicating beverage.</p>
392.5(b) (2)	Acute	<p>Requiring or permitting a driver to be on duty or operate a commercial motor vehicle if, by the driver's general appearance or conduct or by other substantiating evidence, the driver appears to have used alcohol within the preceding 4 hours.</p> <p>Number checked: Number of drivers who showed evidence of having consumed an intoxicating beverage within 4 hours of operating a motor vehicle.</p>
392.6	Critical	<p>Scheduling a run that would necessitate the vehicle being operated at speeds in excess of those prescribed.</p> <p>Number checked: Number of runs checked for compliance with posted speeds.</p>
392.9(a) (1)	Critical	<p>Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured.</p> <p>Number checked: Number of vehicles checked for cargo being properly distributed and adequately secured.</p>

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1.4.8 Parts 393 & 396 - Parts & Accessories, and Inspection, Repair & Maintenance

[Investigative Procedures](#)

[CAPRI Procedures](#)

[Enforcement Procedures](#)

1.4.8.1 Part 393 & 396 - Investigative Procedures

In your review of compliance with Parts 393 and 396, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable hazardous material) and passengers. However, the procedures for motor carriers of passengers (business and nonbusiness) vary slightly in Part 396.

[Vehicle Inspections](#)

[Calculating the Out-of-Service Rate](#)

[Vehicle Maintenance](#)

[Driver Vehicle Inspection Reports](#)

Part 393 & 396 - Vehicle Inspections

What procedures should I follow during my investigation of Part 396?

In your investigation of Part 396:

- Determine if Level V inspections should be conducted during your investigation,
- Select vehicles for inspection,

- Inspect vehicles,
- Calculate the out-of-service rate,
- Determine the number of maintenance files to review,
- Determine the number of DVIRs to review

Following this review, you should, if necessary:

- Cite violations, and
- Document counts for enforcement.

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393 & 396 - Calculating the Out-of-Service Rate

How is the out-of-service rate calculated?

The carriers OOS rate is determined by the number of vehicles placed OOS in relation to the number of vehicles inspected. If the carrier had a compliance review within the previous 12 months, you will only use inspection data that occurred after the compliance review.

The calculation of the OOS rate should be based on vehicles that were transporting

passengers or property in interstate commerce. Review the carriers most recent Level 1, 2, or 5 inspections. The number of vehicles from the vehicle inspection table should determine the number of inspections used to calculate the OOS rate. An example would be where the carrier has 6-25 vehicles; the number of vehicles used to determine the OOS rate would be five. Review the company profile and check the most recent five Level 1, 2, or 5 inspections for the past 12 months or since the last compliance review. There must be at least three vehicle inspections to calculate the OOS rate. However, you should use as many Level 1, 2, or 5 inspections as possible up to the number of vehicle inspections indicated by the table. If there were less than three inspections, conduct additional Level 5 inspections to reach the minimum requirements. If you can not meet this minimum requirement you will be unable to calculate the OOS rate and you should record your comments in Part C of the compliance review.

393 & 396 - Vehicle Maintenance

How far back should I go into a carriers vehicle history in order to review compliance with Part 396 during a CR?

You need to cover the 12-month period prior to the CR or the period since the last CR.

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393 & 396 - Driver Vehicle Inspection Reports

How do I compute the number of driver vehicle inspection reports (DVIR) to be reviewed during a compliance review (CR)?

The review of DVIR should cover the previous three months. One month of DVIR for each vehicle selected should be reviewed, regardless of the number of RODS that are reviewed for compliance with Part 395 within the past six months.

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Can I count a DVIR checked for every day a ROD is checked?

No. The number of RODS checked for the DVIR is the number of RODS checked against those days where the vehicle was operated in interstate commerce. RODS that show 24 consecutive hours off duty, and are verified to be accurate are not counted as a RODS checked for DVIR. The proper cite for ten DVIR that were not conducted, out of sixty-eight checked RODS, would be ten found and sixty-eight checked.

Are motor carriers who operate more than one commercial motor vehicle required to have their drivers complete a DVIR, in writing, at the completion of each days driving activity?

Every motor carrier must require its drivers to report, and every driver shall prepare a report in writing at the completion of each days work, on each vehicle operated in accordance with 396.11(a).

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Are DVIR required for a motor carrier that operates two registered commercial

motor vehicles yet only has one driver?

The exception in 396.11(d) only applies to motor carriers that operate one registered commercial motor vehicle, regardless of the number of drivers employed.

What happens when I am unable to determine the vehicle for a particular shipment?

Occasionally, you may be unable, by any means, to determine the vehicle that moved a particular shipment. When the motor carrier failed to maintain daily vehicle inspection reports (396.11(c)(2)), and you cannot identify the vehicle on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by identifying all vehicles used by the carrier on the date of the shipment.

1.4.8.2 Part 393 & 396 - CAPRI Procedures

Once you have completed your investigation of compliance with Part 396, you should use the following guidelines to assist in the completion of Part B - Violations Tab of the CAPRI software.

How do I record the violations of Part 396 critical and acute regulations?

393 & 396 Acute and Critical Violations

Citation	Type	Description
396.3(b)	Critical	Failing to keep minimum records of inspection and vehicle maintenance. Number Checked: Number of vehicle maintenance files reviewed.
396.9(c)(2)	Acute	Requiring or permitting the operation of a motor vehicle declared "out-of-service" before repairs are made. Note: Prior to citing for a violation of 396.9(c)(2) you should confirm that no local, state or federal agency has taken action against the carrier for this violation. Number checked: Number of days the vehicle operated after being declared OOS, without making repairs.
396.11(a)	Critical	Failing to require driver to prepare driver vehicle inspection report. Number Checked: Number of vehicle inspection reports that were required to be made. Number discovered: Number of vehicle inspection

		reports that were not made **This is not the same as vehicle inspection reports that were not maintained.
396.11(c)	Acute	<p>Failing to correct defects or deficiencies that affect the safe operation of the vehicle listed by the driver in a driver vehicle inspection report before the vehicle is operated again. Note: Prior to citing for a violation of 396.11(c) you must confirm that the report was submitted to the carrier and that the carrier failed to correct the defect.</p> <p>Number checked: Number of days the vehicle operated after defect was noted on daily vehicle inspection report. Number discovered: one per vehicle day that the vehicle was operated without making repairs.</p>
396.17(a)	Critical	<p>Using a commercial motor vehicle not periodically inspected.</p> <p>Number checked: Number of vehicle maintenance files reviewed. Number discovered: Number of vehicles that were not periodically inspected.</p>
396.17(g)	Acute	<p>Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards.</p> <p>Number checked: Number of vehicles that had parts and accessories that did not meet minimum periodic inspection standards not the total number of vehicles.</p>

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1.4.9 Part 395 - Hours of Service of Drivers

[Investigative Procedures](#)

[CAPRI Procedures](#)

[Enforcement Procedures](#)

1.4.9.1 Part 395 - Investigative Procedures

In your review of compliance with Part 395, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable hazardous material) and passengers.

[General](#)

[Passenger Carriers](#)

[Interstate Operations versus Intrastate Operations](#)

[Seasonal Operations](#)

[Requesting Driver Lists](#)

[Driver Sampling Table](#)

[Selecting Drivers Time Records/Records of Duty Status to be Reviewed](#)

[Missing Records-of-Duty Status](#)

[Hours of Service Maximum Driving Time](#)

[False Records of Duty Status](#)

[Out-of-Service Issues Under the New Hours-of-Service Rules](#)

What procedures should I follow during my investigation of Part 395?

Your investigation of Part 395 should begin with:

- Determining the type of motor carrier operation;
- Requesting a driver list;
- Determining the minimum number of drivers time records/records of duty status to be sampled;
- Selecting drivers time records/records of duty status to be reviewed;
- Reviewing drivers time records/records of duty status;

Following this review, you should:

- Cite violations, and if warranted,
- Document counts for enforcement

Part 395 - General

Are certain motor carrier operations allowed exemptions within Part 395?

Yes. The exemptions are defined in Section 395.1. The hours of service exemptions outlined in SAFETEA-LU follow.

1. SAFETEA-LU Section 4130 - Operators of Vehicles Transporting Agricultural Commodities and Farm Supplies.

SAFETEA-LU Section 4130 expanded the existing hours of service exemption for agricultural commodities and farm supplies in 49 CFR 395.1(k) by adding a year round exemption for transporters of livestock feed and specific definitions of “agricultural commodity” and “farm supplies for agricultural purposes.”

Note: Prior to 1996, FMCSA exempted these drivers only from maximum driving and on duty time, which is also the language used in SAFETEA-LU. However, FMCSA subsequently extended the exemption to include all provisions of 49 CFR Part 395 and will continue to do so.

The current agricultural exemption in 49 CFR 395.1(k) reads as follows:

(k) *Agricultural operations*- The provisions of this part **shall not apply** to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation:

- (1) Is limited to an area within a 100 air-mile radius from the source of the commodities or the distribution point for the farm supplies, and
- (2) Is conducted during the planting and harvesting seasons within such State, as determined by the State.

SAFETEA-LU Section 4130 expanded and clarified the agricultural exemption by defining “agricultural commodity” and “farm supplies for agricultural purposes.”

Agricultural commodity: The term ‘agricultural commodity’ means any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in section 602 of the Emergency Livestock Feed Assistance Act of 1988 (7 U.S.C. 1471) and insects).

Livestock is defined in the Emergency Livestock Feed Assistance Act as cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, fish used for food, and other animals designated by the Secretary.

Farm supplies for agricultural purposes: The term ‘farm supplies for agricultural purposes’ means products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons, within each State, as determined by the State, and **livestock feed at any time of the year** (emphasis added).

Prior to SAFETEA-LU, FMCSA did not extend the agricultural exemption to transporters of livestock and livestock feed. The following guidance summarizes FMCSA’s application of the exemption prior to SAFETEA-LU:

395.1 Question 30: Does the exception in [§395.1\(k\)](#) for “drivers transporting agricultural commodities or farm supplies for agricultural purposes” cover the transportation of poultry or poultry feed?

Guidance: No. The exception was created by Sec. 345(a)(1) of the National Highway System Designation Act of 1995 [Public Law 104-50, 109 Stat. 568, at 613], which provides in part that the hours of service regulations “shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purpose.” The terms “agricultural commodities or farm supplies for agricultural purposes” were not defined, but the context clarifies their meaning. Because the statute made the exception available only “during the planting and harvesting seasons” in each State, Congress obviously intended to restrict it to agriculture in the traditional (and etymological) sense, i.e., the cultivation of fields. “Agricultural commodities” therefore means products grown on and harvested from the land, and “farm supplies for agricultural purposes” means products directly related to the growing or harvesting of agricultural commodities.

Drivers transporting livestock or slaughtered animals, or the grain, corn, hay, etc., to feed animals, may not use the “agricultural operations” exception.

SAFETEA-LU Section 4130 supersedes the earlier FMCSA interpretation of agricultural commodity. SAFETEA-LU extends the hours of service exemption to include transporters of livestock and livestock feed. Therefore, **Field staff are directed to disregard the above interpretation (CFR § 395.1 Question 30) and extend the agricultural exemption to carriers of livestock and livestock feed.**

Staff should further note that the SAFETEA-LU definition of “farm supplies for agricultural purposes” **allows transporters of livestock feed to take advantage of the hours of service exemption year round. FMCSA staff, therefore, should not limit the exemption for livestock feed transporters to the “harvest season” as defined by the State.**

2. SAFETEA-LU Section 4131 - Operators of Ground Water Drilling Rigs.

FMCSA rules allow operators of ground water well drilling rigs to restart their 60 or 70 hour clock by taking 24 consecutive hours off duty. SAFETEA-LU reaffirms this provision.

FMCSA defines ground water well drilling rig in 49 CFR 395.2:

Ground water well drilling rig means any vehicle, machine, tractor, trailer, semi-trailer, or specialized mobile equipment propelled or drawn by mechanical power and used on highways to transport water well field operating equipment, including water well drilling and pump service rigs equipped to access ground water.

The exemption for ground water well drilling operators reads as follows (49 CFR 395.1(l)):

Ground water well drilling operations -In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation and operations of a ground water well drilling rig, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

FMCSA staff should continue to allow a 24-hour restart when reviewing ground water well drilling operators. SAFETEA-LU does not offer any additional regulatory exemptions for these drivers.

3. SAFETEA-LU Section 4132 - Operators of Utility Service Vehicles.

Note: This guidance supersedes the Chief Safety Officer’s memorandum entitled, “Hours of Service Enforcement Guidance under Section 131 of the 2004 Omnibus Appropriations” issued on February 17, 2004, and any similar guidance, to the extent such guidance conflicts with the exemption provisions of SAFETEA-LU which prohibited Field staff from enforcing hours of service regulations against utilities and the movie industry.

Prior to the implementation of SAFETEA-LU, FMCSA allowed operators of utility service vehicles to restart their 60 or 70 hour clock after 24 hours or more off duty. (49 CFR 395.1(n)). SAFETEA-LU exempts operators of utility service vehicles from all provisions of 49 CFR Part 395. FMCSA may not attempt to enforce hours of service rules against drivers of utility vehicles.

SAFETEA-LU Section 4132 does not alter the 49 CFR 395.2 definition of utility service vehicle:

Utility service vehicle means any commercial motor vehicle:

- (1) Used in the furtherance of repairing, maintaining, or operating any utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;
- (2) While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and
- (3) Except for any occasional emergency use, operated primarily within the service area of a utility’s subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

SAFETEA-LU Section 4132 also prohibits a State or political subdivision from enacting or

enforcing any hours of service laws or regulations similar to the Federal hours of service regulations contained at 49 CFR Part 395. Therefore, after analysis of this SAFETEA-LU provision, FMCSA has determined that States or political subdivisions are prohibited from requirements with regard to interstate operations of utility service vehicles. SAFETEA-LU does not affect State or Local regulation of the intrastate operation of utility service vehicles. State and local governments may enforce hours of service rules against drivers of utility vehicles in intrastate commerce.

4. SAFETEA-LU Section 4133 - Operators Providing Transportation to Movie Projection Sites.

Note: This guidance supersedes the Chief Safety Officer's memorandum entitled, "Hours of Service Enforcement Guidance under Section 131 of the 2004 Omnibus Appropriations" issued on February 17, 2004, and any similar guidance, to the extent such guidance conflicts with the exemption provisions of SAFETEA-LU which prohibited Field staff from enforcing hours of service regulations regarding certain operations of CMVs providing transportation of property or passengers to or from motion picture production sites.

Transportation

- of property or passengers involved in making a movie;
- to or from a movie production site (including a television movie); and
- within a 100 air-mile radius of a driver's work reporting location

is subject to the hours of service rules in effect prior to those published April 27, 2003 (i.e., is exempt from the new hours-of-service rules). Unlike the 100 air-mile radius exemption under 49 CFR 395.1(e), SAFETEA-LU does not require that these drivers start from or return to their work reporting location.

FMCSA staff should review these operations for violations of the 10, 15, and 60/70-hour rules for the days drivers operate within the 100 air-miles. While operating under these circumstances, drivers may not take advantage of the 34-hour restart or any other provisions of the new hours of service rules.

FMCSA staff should review hours of service for violations of the 11, 14, and 60/70-hour rules on days when drivers operate outside the 100 air-mile radius. Drivers may, during this period, utilize the 34-hour restart provision.

Staff should use the old hours of service rules ONLY on days the driver operates within 100 air-miles of the work reporting location. For example, eight hour rest periods apply only BETWEEN consecutive days the driver operates under the old rules. Ten-hour rest periods apply both BEFORE AND AFTER days the driver operates under the current hours of service rules.

Example:

A driver regularly operates outside 100 air-miles. He takes 34 hours off duty (taking advantage of the restart under the new hours of service rules) then operates within 100 air-miles. He drives five hours, has four hours on duty not driving, three hours off duty then drives another five hours returning to his work reporting location. He takes eight hours off

duty and repeats the schedule. At this point, the driver is in compliance with the hours of service rules. He then takes eight hours off duty and operates beyond 100 air-miles the next day. The driver is in violation of the 14-hour rule as soon as he starts driving and the 11 hour rule after driving more than one hour because he was not off duty for ten consecutive hours prior to operating under the new hours of service rules.

In addition, a driver who transports equipment and passengers to or from motion picture production sites may be required to operate under the current hours of service rules on some days and under the old hours of service rules on other days, depending on whether the driver stays within a 100 air-mile radius.

5. SAFETEA-LU Section 4146 - Exemption During Harvest Periods.

SAFETEA-LU creates a very specific exemption for transporters of grapes during harvest season in the State of New York. Specifically, Section 4146 has been interpreted by FMCSA to exempt these drivers from 49 CFR Part 395 for those operations entirely:

- within State of New York;
- west of Interstate 81;
- within 150 air-miles where the grapes were picked or distributed; and
- within the harvest season as defined by the State of New York.

Unlike the other exemptions described in this memorandum, this exemption expires at the end of Fiscal Year 2009.

What happens when a carrier fails to have complete time records for 100 air-mile radius drivers?

Every single condition of the 100 air- mile radius exemption in Section 395.1(e) must be fulfilled in order for a driver to be exempt from preparing a record-of-duty status. A failure to fulfill any condition of the exemption results in the application of the requirement to prepare a record-of-duty status.

Part 395 -Passenger Carriers

What are the procedures I should follow if I am investigating a motor carrier of passengers?

Private Motor Carriers of Passengers (nonbusiness) are not subject to the record keeping requirements within Part 395. All other motor carriers of passenger (e.g. For-Hire and Private Motor Carrier of Passengers (Business)) are subject to the same record keeping requirements as motor carriers of property.

What specific issues should I be aware of when investigating a motor carrier of passengers?

- **Extra Board, Shape and Spare Drivers** - An **extra board**, **shape**, or **spare** driver is a driver who does not have assigned work, but remains at the terminal in order to handle an operational contingency such as driver absence or vehicle breakdown. In most cases, they should record their hours as on duty, not driving until they are dispatched on the road.
- **Relief drivers** - On long distance trips requiring straight-through driving, motor coach operators may send a relief driver ahead to take over driving responsibilities for the next part of the trip. The means by which this driver gets to the layover location can vary. Below are two scenarios and the correct recording of hours of service for each:
Scenario #1
Driver is driven, or uses public transportation (i.e. commercial aircraft or train) to get to or return from the layover location. In this instance, if the driver has at least 8 consecutive hours off-duty after reaching the layover destination or terminal before assuming any on-duty status, the time spent traveling at the direction of the motor carrier may be logged as off-duty. If there is less than 8 consecutive hours off-duty, the time traveling at the direction of the motor carrier must be recorded as on-duty, not driving.
Scenario #2
Driver drives himself/herself in an automobile (non-commercial motor vehicle) to the layover location or back to the terminal. Time spent driving a non-commercial motor vehicle at the direction of the motor carrier must be logged as on-duty, not driving.
- **Team drivers** - In order to log sleeper berth status, the motorcoach must be equipped with a sleeper berth meeting the criteria in section 393.76. There are no exceptions for motorcoach sleeper berths. Investigators should be aware that there are motorcoaches in operation that meet the sleeper berth requirements. If the motorcoach is not properly equipped with a sleeper berth that meets the criteria, and there is a team assigned to it, all time spent riding in the motorcoach (in the reclining position or not) must be recorded by the driver as on-duty, not driving and may not be recorded as sleeper berth duty status. The only exception would be a driver who is riding on the motorcoach to the destination and is afforded 8 consecutive hours off-duty after reaching the destination. In such case, the time spent riding on the motorcoach may be recorded as off-duty.

What are the supporting documents I may encounter that are unique to the passenger industry?

Charter orders and itineraries are the passenger carriers shipping papers. Although many are different in appearance, they usually contain the same information, such as the carriers name, drivers name, date, vehicle number, group being transported, origin and destination points, routes taken, and cost.

- Itineraries are similar to charter orders, but they list a detailed time report of the passenger carriers trip. Itineraries will show arrival and destination times and dates. They are usually used during an extended charter trip.
- Most passenger carriers maintain charter orders and itineraries as a normal part of their business. Both of these documents as well as other supporting documentation should be used to determine the accuracy of the drivers records of duty status.
- In many instances, drivers will enter start and finish time on their trip envelopes, which can be used to verify their records of duty status. Major destination locations may maintain information regarding arrival and departure times for group tours. In-depth investigations may involve contacting the group that booked the charter for further verification.

Part 395 - Interstate Operations versus Intrastate Operations



What is our policy concerning drivers who operate both in intrastate and interstate commerce?

(Policy: Citing Intrastate Violations of Part 395)

The records-of-duty-status requirements in Part 395 apply to all drivers seven days prior to an interstate trip and all of Part 395 applies for the 7- or 8-day period following an interstate trip. The important points to remember are:

- Any driver who begins a trip in interstate commerce must continue to meet the requirements of 395.3(a) and (b) through the end of the next 7 to 8 consecutive days, depending on which rule the motor carrier operates under.
- The driver must continue to comply with the requirements of Part 395, even if he/she operates exclusively in intrastate commerce for the remainder of the 60/70-hour period (i.e., 7-8 day schedule) at the end of the interstate trip.
- A driver who begins a trip in interstate commerce, in a CMV, must have in his/her possession a copy of records of duty status for the previous 7 consecutive days, as required by 395.8(k)(2), unless they meet 395.1(e), even if the driver operated only in intrastate commerce during that 7-day period.
- **Note: During the 7-day period prior to the interstate trip the driver may follow the state regulations applicable to intrastate commerce with regard to the states CMV driving and on-duty requirements.**
- FMCSA investigators should cite drivers for violations of the 10/11- or 14/15-hour rules or the 60- or 70-hour rules that are committed while on the interstate trip or during the 7 or 8 days after completing the interstate trip (depending on which rule the motor carrier operates under). The driver remains subject to Part 395 for 7 or 8 days after a trip in interstate commerce even if he/she drives only in intrastate commerce for that period.
- FMCSA investigators should be aware that, for cargo carriers, any period of 7 or 8 consecutive days may end with the beginning of any off duty period of 34 or more consecutive hours (34-hour restart). **Remember, a driver is only in violation of the 60/70 hour rule if they were driving after the 60/70 hour.**
- Passenger carriers, however, may not use the 34-hour restart.

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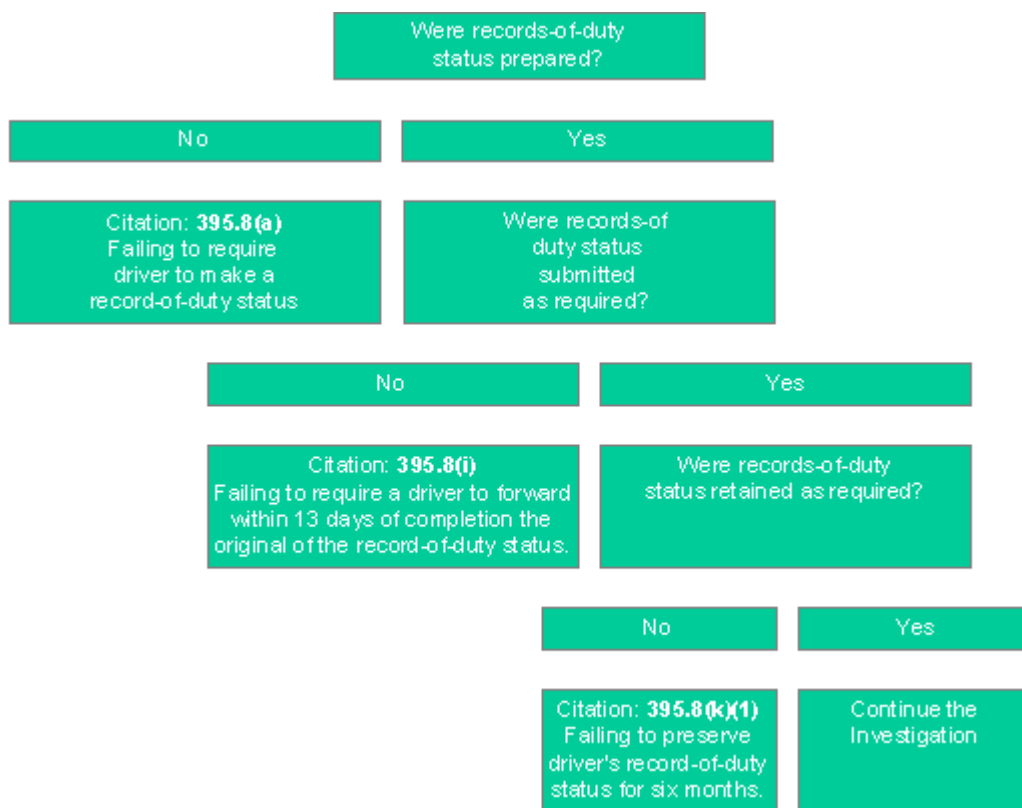


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Part 395 - Missing Records-of-Duty Status

When the carrier does not provide records-of-duty-status, what procedure should I follow to ensure that the correct citation is entered on the compliance review?



Description of Flow Chart

What should I keep in mind when citing a carrier for failure to require a driver to prepare a record-of-duty status?

When citing failure to prepare RODS, the number of RODS checked for preparation is the number of days for which the driver remained an employee of the motor carrier and a RODS, or time record, was requested or reviewed.

What happens when I am unable to determine the driver for a particular shipment?

Occasionally, you may be unable, by any means, to determine the driver who moved a particular shipment. When the motor carrier failed to maintain records of duty status (395.8 (k)(1)), and you cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by listing the names of all drivers employed by the carrier on the date of the shipment.

Part 395 - Hours of Service Maximum Driving Time

How do I determine the number of RODS to check for 10/11 and 14/15-hour violations?

The number checked is the number of RODS reviewed based on the sample chart. ([See Part 395 Record Selection Table](#))

How do I calculate the 14-hour rule following two qualifying sleeper berth periods totaling 10-hours?

The 14-hours rule is calculated by counting the time from the end of the prior qualifying sleeper berth period to the beginning of a subsequent qualifying sleeper berth period. Stated another way, the 14-hour rule is calculated by counting the time on each side of the first qualifying sleeper berth period.

Can a driver combine sleeper berth and off-duty time?

If a driver, or a member of a driving team, has at least two qualifying sleeper berth periods totaling at least 10 hours immediately prior to taking 10 or more consecutive hours off-duty, the driver may combine the last sleeper berth period with the 10 consecutive hours off-duty period.

How do I record violations that span consecutive days?

The number checked refers to the total number of RODS checked for the sample. The number of violations discovered refers to the total number of RODS in violation. When hours-of-service violations span more than one day it is important to record the violation for **each day**. For example, if you were to check 30 days and you discover a 10/11-hour violation that begins on the 11th and continues through the 12th, the proper cite on the compliance review would be 2 discovered of 30 checked **not** 1 discovered of 30 checked.

Do I count Off-Duty Days as a Day Checked?

Yes. You should include those RODS that show the driver was off-duty for the entire 24-hour period. Multiple days designated as off-duty, on a single ROD, are also counted as multiple RODS checked for excessive driving.

What is the 34-hour restart provision?

A driver of a cargo-carrying vehicle may restart the 60/70-hour period by taking 34 or more consecutive hours off-duty provided at the beginning of the 34-hour period, the driver has not accumulated more than 60 or 70 on-duty hours in the prior 6 or 7 days.

How do I ensure I meet the minimum number to be checked for 60 hours/7 days and

70 hours/8 days?

When reviewing the drivers RODS for the 60/70 hour violations always review each day within the selected period for compliance.

Part 395 - False Records of Duty Status

How do I detect false records-of-duty status?

To detect falsification of RODS and/or time records, compare the entries on these records to verified information on other documents. It may be helpful, but is not necessary in all cases, to interview drivers when determining whether or not falsification exists.

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■ Part 395 - Out-of-Service Issues Under the New Hours-of-Service Rules

What is the length of out-of-service (OOS) time required when a driver has violated the 11- or 14-hour rules in a sleeper berth operation?

In order to regain compliance with Part 395, sleeper berth drivers who have violated the 11- or 14-hour rule must be placed OOS for the minimum amount of time necessary to bring the driver into compliance with section 395.3. This OOS period will be determined using the number of hours in the drivers prior qualifying sleeper berth period. (e.g., If a driver had five qualifying hours in the sleeper berth and uses the sleeper berth while out-of-service, the OOS period would be for a five-hour period).

What Is the OOS Period When A Driver Has Exceeded 60/70 Hours In 7/8 Days?

In order to regain compliance with Part 395, a driver who has exceeded 60/70 hours in 7/8 days must be placed OOS for the minimum amount of time necessary to bring the driver into compliance. Stated another way, the driver must be placed OOS until the beginning of the next 24-hour period when the driver would begin the day under the 60/70-hour limit.

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How do I record violations of Part 395 critical regulations (except Alaska)?

You should record the violations as follows:

Violations of Part 395 Critical Regulations

Citation	Type	Description
395.1(o)	Critical	Requiring or permitting a short-haul property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours. <i>Number checked: Total number of RODS checked, <u>including off duty days</u>.</i>
395.3(a)(1)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours. <i>Number checked: Total number of RODS checked, <u>including off duty days</u>.</i>
395.3(a)(2)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty. <i>Number checked: Total number of RODS checked, <u>including off duty days</u>.</i>
395.3(b)(1)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on-duty more than 60 hours in 7 consecutive days. <i>Number checked: Number of <u>seven-day periods</u> checked, not the total number of RODS checked.</i>
395.3(b)(2)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days. <i>Number checked: Number of <u>eight-day periods</u> checked, not the total number of RODS checked.</i>

395.3(c)(1)	Critical	<p>Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 7 consecutive days without taking an off-duty period of 34 or more consecutive hours.</p> <p>Number checked: Number of <u>seven-day periods</u> checked, not the total number of RODS checked.</p>
395.3(c)(2)	Critical	<p>Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 8 consecutive days without taking an off-duty period of 34 or more consecutive hours.</p> <p>Number checked: Number of <u>eight-day periods</u> checked, not the total number of RODS checked.</p>
395.5(a)(1)	Critical	<p>Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours.</p> <p>Number checked: Total number of RODS checked, <u>including off duty days</u>.</p>
395.5(a)(2)	Critical	<p>Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours.</p> <p>Number checked: Total number of RODS checked, <u>including off duty days</u>.</p>
395.5(b)(1)	Critical	<p>Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days.</p> <p>Number checked: Number of <u>seven-day periods</u> checked, not the total number of RODS checked.</p>
395.5(b)(2)	Critical	<p>Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days.</p> <p>Number checked: Number of <u>eight-day periods</u> checked, not the total number of RODS checked.</p>
395.8(a)	Critical	<p>Failing to require a driver to make a record of duty status.</p> <p>Number checked: Total number of RODS each driver was required to prepare.</p>
395.8(e)	Critical	<p>False reports of records of duty status. (This citation is for violations in which the supporting document(s) indicate the records of duty status are false by one hour or more, or fifty or more miles). Note: Enforcement action is recommended <u>only</u> when a 10% or greater frequency of falsification to conceal excess hours has been discovered.</p> <p>Number checked: Number of days which supporting documents were used to verify the accuracy of a drivers RODS</p>
395.8(i)	Critical	<p>Failing to require a driver to forward within 13 days of</p>

		completion, the original of the record of duty status. <i>Number checked: Number checked is the number of days in which a record of duty status should have been on file. The RODS must be at least 14 days old at the time of review.</i>
395.8(k)(1)	Critical	Failing to preserve driver's record of duty status for 6 months. <i>Number checked: Number checked is the number of days checked in which a record of duty status should have been on file.</i>
395.8(k)(1)	Critical	Failing to preserve driver's records of duty status supporting documents for 6 months. <i>Number checked: Total number of supporting documents that the carrier was required to maintain.</i>

How do I record violations of Part 395 critical regulations for Alaska driving violations?

You should record the violations as follows:

Part 395 Critical Regulations Alaska

Alaska Driving Violations Only

Citation	Type	Description
395.1(h)(1)(i)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska). <i>Number checked: Number of RODS checked, <u>includes off duty days.</u></i>
395.1(h)(1)(ii)	Critical	Requiring or permitting a driver to drive after having been on duty 20 hours (Driving in Alaska). <i>Number checked: Number of RODS checked, <u>includes off duty days.</u></i>
395.1(h)(1)(iii)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska). <i>Number checked: Number of RODS checked, <u>includes off duty days.</u></i>

395.1(h)(1)(iii)	Critical	<p>Requiring or permitting a driver to drive after having been on duty more than 70 hours in 7 consecutive days (driving in Alaska).</p> <p><i>Number checked: Number of <u>seven-day periods</u> checked, not the number of RODS.</i></p>
395.1(h)(1)(iv)	Critical	<p>Requiring or permitting a driver to drive after having been on duty more than 80 hours in 8 consecutive days (driving in Alaska).</p> <p><i>Number checked: Number of <u>eight-day periods</u> checked, not the total number of RODS checked.</i></p>
395.1(h)(1)(iv)	Critical	<p>Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (driving in Alaska).</p> <p><i>Number checked: Number of <u>eight-day periods</u> checked, not the total number of RODS checked.</i></p>
395.1(h)(2)(i)	Critical	<p>Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska).</p> <p><i>Number checked: Number of RODS checked, <u>includes off duty days.</u></i></p>
395.1(h)(2)(ii)	Critical	<p>Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska).</p> <p><i>Number checked: Number of RODS checked, <u>includes off duty days.</u></i></p>
395.1(h)(2)(iii)	Critical	<p>Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).</p> <p><i>Number checked: Number of <u>seven-day periods</u> checked, not the number of RODS.</i></p>
395.1(h)(2)(iv)	Critical	<p>Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).</p> <p><i>Number checked: Number of <u>eight-day periods</u> checked, not the total number of RODS checked.</i></p>

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1.4.10 Compliance Reviews of HM Shippers

General

[Part 107 - Registration of Persons Who Offer Hazardous Materials](#)

[Part 172 - Compliance Review of HM Shippers Hazard Communication, Emergency Response Information & Training](#)

[Part 173 - Packaging](#)

[Illustration HM-1 Notification Letter for Government Violators](#)

[Illustration HM-2 Emergency Response Telephone Questions and Answers](#)

[Illustration HM-3 How do I properly cite HM training violations?](#)

[Illustration HM-4 HM Package Inspection Questions & Answers](#)

[Illustration HM-5 Exhibit Extract for Part 107](#)

[Illustration HM-6 Exhibit Extract for Part 172](#)

[Illustration HM-7 Exhibit Extract for Part 173](#)

1.4.10.1 General

What is a hazardous materials (HM) Shipper Compliance Review?

The HM shipper/shipper terminal compliance review is an in-depth review of the shipper facility's compliance with the applicable Hazardous Materials Regulations (HMRs).

To assist you in conducting compliance reviews on HM Shippers, [checklists](#) have been provided to facilitate the identification of violations of the hazardous materials regulations.

What if the HM Shipper's principle place of business is in another State or Country?

The Division Administrator/State Director of the state that is responsible for the shipper's principle place of business should be notified when a shipper review will be conducted on a shipper's terminal located in another State.

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What should I do when I discover an HM shipper is also a motor carrier?

If a shipper is also a motor carrier, a compliance review of the motor carrier operations may be conducted. A CR of the motor carrier operations is recommended if one of the following conditions is met:

- There are indications of substantial noncompliance with the FMCSRs or HMRs,
- The carrier has a safety rating factor less than satisfactory and has not been reviewed in the past 12 months, or
- The carrier has never been reviewed.
- If you discover the HM shipper is a motor carrier, make certain to follow the procedures set forth in the section entitled "Compliance Review of HM Carriers"

How should I complete the CAPRI forms, when I discover the HM shipper is also a motor carrier but I am not reviewing the motor carrier operations?

- The CAPRI forms should indicate the information of the motor carrier. The Part A shall indicate the type of company is a carrier/shipper operation.
- The Part B should indicate the violations that were found during the review.
- In Part C indicate that only the hazardous materials operations was reviewed.

Where are HM Shipper Reviews performed?

Generally, shipper reviews should be conducted at the location from where hazardous materials are being shipped. For CRs completed at locations other than the principal place of business:

- Complete the address tab and identification tab of Part A of the laptop CR software as if the CR was conducted at the shipper's principal place of business,
- Check "terminal" in the address tab under location of review,
- Enter all other information based on the specific terminal operation (e.g. hazardous materials shipped),
- Include the terminal location in the Part C comments to the compliance review,
- Do not upload the CRs of a shipper terminal into MCMIS, and
- Forward a hard copy of the review to the Office of Information Systems (MC-RIS) for input.

What should I do before citing a record keeping violation on an HM shipper review?

Investigators should exercise care when citing a shipper for a record keeping violation during a CR. Before any record keeping violations are cited, ensure that the records are not being maintained elsewhere.

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1.4.10.2 Part 107 – Registration of Persons Who Offer Hazardous Materials

- [Investigative Procedures](#)
- [CAPRI Procedures](#)
- [Enforcement Procedures](#)

Compliance Review of HM Shippers - Part 107 - Investigative Procedures

What are the procedures for determining a shipper compliance with the RSPA Registration requirements?

If applicable, determine whether the shipper has registered with the Research and Special Programs Administration (RSPA) in accordance with § 107.608. If a shipper cannot produce evidence of registration, but claims to be registered, a 10 working day period should be provided to the company to produce evidence of registration, or evidence of registration could be verified at <http://gotham.fmcsa.dot.gov/>.

What should I do with an HM shipper that should be registered but is not?

If the shipper is not currently registered with the RSPA, inform a high-level company official that they must register immediately for each registration year in which they engaged in activities covered by the registration program. If the shipper submits complete and accurate proof of registration within 10 working days after closeout of the CR, enforcement action should not be initiated. **If the shipper fails to register within the 10 working days, enforcement action should be initiated.**

Compliance Review of HM Shippers - Part 107 - CAPRI Procedures

What are the Acute and Critical Regulations for Part 107?

There are **no** violation cites in Part 107 that have been designated as acute or critical regulations. However, the violation listed below has been designated as Severe Level II and should be considered for enforcement as warranted.

Acute and Critical Regulations for Part 107

Citation	Type	Description
107.608	Severe Level II****	Offering a hazardous material for transportation without having registered with the Department of Transportation, under Subpart G of Part 107.

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1.4.10.3 CR of HM Shippers - Part 172 Hazard

[Investigative Procedures](#)

[CAPRI Procedures](#)

[Enforcement Procedures](#)

Compliance Review of HM Shippers - Part 172 - Investigative Procedures

[Shipping Papers](#)

[Marking, Labeling, and Placarding](#)

[Training](#)

Compliance Review of HM Shippers - Part 172 - Shipping Papers Part 172 Subpart C

How do I check a shipper facility for shipping paper compliance?

Tour the shipper's facility and review the material safety data sheets to become familiar with all of the shipped HM. Look for the presence of any vehicles or packages designed to ship HM and placards or labels, if any, affixed to the vehicles or packages. If only pre-printed forms are used for shipping papers, determine whether there is an appropriate form for each proper shipping name of the HM being shipped. Verify that the shipper has a sufficient system to ensure that these forms are used as complete and accurate shipping papers. Examine shipping papers given to local and over the road drivers as they arrive at the dock. This is a good opportunity to determine whether drivers and dock personnel are familiar with the HMRs.

How long must a shipper retain shipping papers?

For hazardous waste, the shipping paper copy (the hazardous waste manifest) must be retained for three (3) years after the materials is accepted by the initial carrier. For all other HM, shippers must retain hazardous materials shipping papers for two years after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier. This requirement is found in § 172.201(e). Keep in mind that shipping papers may be retained electronically.

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Are waybills and manifests the same as a shipping paper?

Keep in mind that manifests and waybills reviewed in the shippers office may not be the document used as the shipping paper for transportation. Shippers frequently maintain shipping pros for the facility in their files.

Is the EPA Uniform Hazardous Waste Manifest a shipping paper?

Yes. The EPA and DOT agreed to allow the Uniform Hazardous Waste Manifest (UHWM)

to serve as a shipping paper. The UHWM must contain the information required by the HMRs. If hazardous waste is being offered for transportation, review the company's compliance with the hazardous waste manifest requirements in § 172.205.

Where should the emergency response information be on a shipping paper?

Verify that emergency response information is available during transportation as required by § 172.600. This requirement may be met a number of different ways including attaching an MSDS or referencing the Emergency Response Guidebook. Check the shipping papers for the emergency response telephone number in accordance with § 172.604. An individual who is knowledgeable and can provide appropriate information in the case of an emergency must answer the number to be in compliance with this requirement. Pagers and answering machines are not acceptable. If the offerer uses a third party provider for this function, the Safety Specialists should verify that the offerer has a valid contract with the provider. [See Illustration HM-2](#)

■ *Compliance Review of HM Shippers - Part 172 - Marking, Labeling, Placarding Part 172, Subparts D, E, and F*

How should I check for HM Shipper compliance with the marking, labeling, and placarding requirements of the HMRs?

Check the dock to determine the compliance of shipments ready to enter transportation. Activities should include:

Inspecting HM packages if available. At a minimum, attempt to examine one package for each proper shipping name or class/division of HM offered or transported. Special attention should be given to materials listed in Table 1 of § 172.504.

- Inspecting HM shipments on the dock. Inspect shipping papers (if available), packaging, marking, and labeling. Record package inspections using HMPIP Software for packages originating at a location other than the shipper or carrier. See [Using HMPIP Software](#).
- Determining whether placards and markings are properly provided and affixed to those vehicles and packages that require them.
- If the Shipper is performing loading functions:
 - Determining whether HM is properly loaded, blocked, and braced on vehicles.
 - Determining whether the proper separation and segregation of HM is followed.
 - Observing shipments of poisons to determine whether they are loaded with foodstuffs [be careful of the exception in § 177.841(e)].
- Inspecting vehicles on the "ready line" for placarding and shipping paper violations, and, if the shipper has shipments ready for transportation:
 - Checking for proper specification packaging and marking, and
 - Determining whether the package is specified for the HM.

■ *Compliance Review of HM Shippers - Part 172 - Training Part 172, Subpart H*

What employees at a shipper facility need to have HM training?

Employees responsible for any aspect of HM compliance must have HM training. This may include the safety director, rate and billing clerks, dockworkers, city pickup and over the road drivers, dispatchers, and any other persons engaged in activities covered by the HMRs. The

regulations in § 171.8 define a Hazmat Employee as someone who, during the course of employment:

1. Loads, unloads, or handles hazardous materials;
2. Manufactures, tests, reconditions, repairs, modifies, marks, or otherwise represents containers, drums, or packagings as qualified for use in the transportation of hazardous materials;
3. Prepares hazardous materials for transportation;
4. Is responsible for safety of transporting hazardous materials; or
5. Operates a vehicle used to transport hazardous materials.

How do I determine if shipper employees who perform hazardous materials functions are properly trained?

1. **Interview employees engaged in hazardous materials activities.**
 - **Determine the employees knowledge of the HM regulations related to their job function,**
 - **Review internal procedures for handling and preparing HM packages for transportation that may differ from published company policy and the HMRs, and**
 - **Determine whether the employee received appropriate training.**
2. **Make note of all interviewed employees who are not familiar with the Hazardous Materials Regulations (HMRs) applicable to their responsibilities.** This lack of knowledge is an indication of an ineffective training program for HAZMAT employees, and a violation of § 172.702(b) for shippers.
3. **Determine whether HAZMAT employees are trained and the related documentation is maintained.** Pay particular attention for the requirement to provide function specific training § 172.704(a)(2). Does the function-specific training cover all aspects of the employees HM duties?
4. **Review the description of the training materials used to meet the training requirements.** Review the actual training materials to verify whether all subject areas, required by § 172. 704(a), are covered by the training.
5. **Review security awareness training for all hazmat employees.** See the Security Section for more details on violations of the HM training requirements related to security.
6. **Review in-depth security training for all hazmat employees with functions covered or affected by the Security Plan.** See the Security Section for more details on violations of the HM training requirements related to security.

Compliance Review of HM Shippers - Part 172 - CAPRI Procedures for Part 172

How do I properly cite violations of HM training requirements?

[See Illustration HM-3.](#)

What violations types should be consider when enforcement action is contemplated?

Enforcement should be considered if one or more of the **Severe******* violations listed below are discovered.

Acute and Critical Regulations for Part 172

Citation	Type	Description
172.200(a)	Severe Level I	Offering a hazardous material without preparing a shipping paper. (Use for nothing prepared).
172.201(e)	Severe Level II	Offerer fails to maintain a copy of the HM shipping paper as prescribed for 375 days (two years after Jan 9, 2006) after the date accepted by the motor carrier.
172.202(a)	Severe Level II	Failing to enter the proper description of a hazardous material on a shipping paper. (Use for incorrect or incomplete shipping papers or to consolidate multiple shipping paper violations).
172.203(a)	Severe Level II	Failing to enter on a shipping paper the notation "DOT-E" followed by the exemption number.
172.203(c)(1)	Severe Level II	Failing to enter the hazardous substance constituent on a shipping paper when not identified by the proper shipping name.
172.203(d)	Severe Level II	Failing to include on shipping papers for a shipment of radioactive material physical and chemical form, activity, and category of label.
172.203(m)	Severe Level I	Failing to enter the words "Poison Inhalation Hazard" or "Toxic Inhalation Hazard" on the shipping paper when required.
172.203(n)	Severe Level II	Failing to enter the word "HOT" on the shipping paper for elevated temperature materials as required.
172.203(o)	Severe Level I	Failing to include the additional required

		information for organic peroxides or self reactive materials on shipping paper.
172.205(a)	Severe Level I	Offering a hazardous waste without a hazardous waste manifest.
172.205(a)	Severe Level II	Failing to properly prepare a hazardous waste manifest. (Use for an incorrect or incomplete hazardous waste manifest).
172.205(b)	Severe Level II	Failing to prepare the hazardous waste manifest in accordance with 40 CFR Part 262.
172.313(a)	Severe Level I	Failing to mark a package of hazardous materials with the words "Inhalation Hazard" when required.
172.301(a)(1)	Severe Level II	Failing to properly mark a non-bulk package of hazardous material with the proper shipping name and identification number.
172.320(a)	Severe Level II	Failing to mark a package containing Class 1 material with the appropriate EX-number. (Check for applicable exceptions before citing).
172.326	Severe Level II	Failing to properly mark a portable tank of hazardous materials with the proper shipping name and identification number.
172.326(c)(2)	Severe Level II	Failing to provide to a motor carrier the required identification numbers for a portable tank.
172.328(a)(1)	Severe Level II	Failing to provide to a motor carrier the required identification numbers for a cargo tank.
172.328(a)(2)	Severe Level II	Offering a cargo tank containing hazardous material that has not been marked with the required identification number.
172.400(a)	Severe	Failing to properly label a

	Level II	package of hazardous materials.
172.403	Severe Level II	Failing to affix the correct label to a package of radioactive material.
172.506(a)	Severe Level II	Failing to provide the required placards to a motor carrier.
172.600(c)(1)	Severe Level II	Failing to provide emergency response information.
172.604(a)	Severe Level II	Failing to provide an emergency response telephone number.
172.604(a)(1)	Severe Level II	Failing to provide an emergency response telephone number that is monitored at all times that a hazardous material is in transit.
172.604(a)(2)	Severe Level II	Failing to provide the 24-hour emergency response telephone number of a person who is knowledgeable of the hazards and characteristics of the hazardous materials being shipped (of a person who does not have comprehensive emergency response and accident mitigation information).
172.704(a)	Severe Level II	Failing to train hazardous material employees as required. (Use when at least 10% of hazardous material employees are not trained as required).

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1.4.10.4 Part 173 – Packaging

[Investigative Procedures](#)
[CAPRI Procedures for Part 173](#)
[Enforcement Procedures](#)

Part 173 - Investigative Procedures

If the shipper performs the loading function what should I look for when checking packaging?

If the shipper is performing the loading:

- Determine whether HM is properly loaded, blocked, and braced on vehicles.
- Determine whether the proper separation and segregation of HM is followed.
- Observe shipments of poisons to determine whether they are loaded with foodstuffs; however, be careful of the exception in § 177.841(e).
- Inspect vehicles on the "ready line" for marking, placarding and shipping papers to determine if materials should be in specification packaging.
- If the shipper has hazardous material shipments ready for transportation, check for proper specification packaging and marking, and determine whether the package is specified for the HM being transported. See [Illustration HM-4](#) - HM Package Inspection Questions & Answers.

How do I prove the packaging is authorized for the hazardous materials shipped?

The authorized packaging can be determined by using the hazardous materials table. Columns 7 & 8 of the hazardous materials table will specify the type of bulk or non-bulk packaging authorized to ship the hazardous material. Column 7 contains special provisions for a specific hazardous materials and column 8 defines packages exceptions and types of packaging authorized to ship and transport hazardous materials.

What should I be aware of when determining packaging violations?

When determining packaging violations make certain to check the special provisions and the exceptions defined in the hazardous materials table. There are packagings that are shipped under DOT exemptions, which are identified as DOT-E. These packages are authorized for certain materials and can be checked by its DOT-E number. You can check DOT-E numbers using the Research and Special Program Administrations (RSPA) website: [http:// hazmat.dot.gov](http://hazmat.dot.gov).

Part 173 - CAPRI Procedures for Part 173

What violations types should be consider when enforcement action is contemplated?

Enforcement should be considered if one or more of the **Severe******* violations listed below are discovered.

Violations Types

Citation	Type	Description
173.21(a)	Severe Level I	Offering a forbidden material for transportation.
173.21(e)	Severe Level I	Offering for transportation materials, which if combined, would likely cause a dangerous evolution of heat, flammable or poisonous gas or vapor, or a corrosive material.
173.22(a)(2)	Severe Level I	Offering a hazardous material in an unauthorized package.
173.24(b)(1)	Acute	Transporting hazardous materials in a portable tank that has an identifiable release of hazardous materials to the environment.
173.24(b)(1)	Acute	Transporting hazardous materials in a cargo tank

		that has an identifiable release of hazardous materials to the environment.
173.24(b)(1)	Acute	Transporting hazardous materials in a non-bulk packaging that has an identifiable release of hazardous materials to the environment.
173.24(b)(2)	Severe Level I	Offering for transportation a hazardous material in a package that resulted in the effectiveness of the package being substantially reduced.
173.24b(d)(2)	Severe Level I	Loading a cargo tank with a hazardous material that exceeds the maximum weight of lading marked on the specification plate.
173.25(a)(2)	Severe Level II	Failing to properly mark an overpack with the proper shipping name and ID number for materials contained within.
173.25(a)(2)	Severe Level II	Failing to properly mark an overpack with the proper labels for materials contained within.
173.25(a)(2)	Severe Level II	Failing to properly orient packages subject to the marking requirements of 172.312 in an overpack.
173.30/177.848(d)	Severe Level I	Loading hazardous materials not in accordance with the segregation table.
173.30/177.834(g)	Severe Level II	Failing to brace containers of hazardous materials to prevent relative motion between containers.
173.30/177.835(a)	Severe Level II	Loading into or on, or unloading a Class 1 (explosive) material from a motor vehicle with the engine running.
173.33(a)	Severe Level I	Offering or accepting for transportation a hazardous material in an unauthorized cargo tank motor vehicle.
173.33(a)(2)	Severe Level I	Transporting or loading two or more materials in a cargo tank motor vehicle that resulted in an unsafe condition (fire, explosion, etc.)
173.33(b)(1)	Severe Level I	Transporting in a cargo tank motor vehicle a hazardous material that had a dangerous reaction when in contact with the tank.
173.33(c)(5)	Severe Level I	Loading a division 6.1 material in a cargo tank having a maximum allowable working pressure of less than 25 psig.
173.33(e)	Severe Level I	Transporting (Division 6.1 material, oxidizer liquid, liquid organic peroxide, or corrosive liquid) in cargo tank piping without bottom damage protection devices meeting the requirements of § 178.337-10 or § 178.345-8(b).
173.33(e)	Severe Level I	Transporting (Division 6.1 material, oxidizer liquid, liquid organic peroxide, or corrosive liquid) in cargo tank piping while using a sacrificial device to satisfy accident damage protection requirements.
173.40(d)	Severe Level I	Offering a cylinder charged/filled with a poisonous material without providing additional protection as

		required.
173.301(d)	Severe Level II	Offering manifolded (interconnected) cylinders except as authorized.
173.301(e)	Severe Level II	Offering a charged/filled cylinder that has a container pressure at 70 degrees F (21.1 C) that exceeds its marked or designated service pressure.
173.301(f)	Severe Level II	Offering a charged/filled cylinder that has a container pressure at 130 degrees F (54.4C) that exceeds 5/4 times its marked or designated service pressure.
173.301(g)	Severe Level I	Offering a charged/filled cylinder with flammable, corrosive, or noxious gases without a prescribed valve protection device.
173.301(i)	Severe Level I	Offering a charged/filled cylinder that was manufactured outside the United States, not in accordance with prescribed DOT specifications.
173.315(j)	Severe Level I	Transporting a storage container charged with LPG to more than 5% of their water capacity. (Same as transporting HM in an unauthorized package, which is an acute violation)
173.413	Severe Level I	Using a Type B package not designed and constructed in accordance with all applicable requirements contained in 10 CFR 71.
173.421	Severe Level II	Offering a radioactive material for transportation not in proper condition for shipment. (Use for limited quantities of radioactive material that does not meet one or more of the conditions in § 173.421).
173.421	Severe Level II	Offering a radioactive material described, marked and packaged as a limited quantity that exceeds .5 mSv/hour (mrem/hour) on the surface of a package.
173.422	Severe Level II	Offering a radioactive material for transportation not in proper condition for shipment. (Applies to radioactive instruments and articles that do not meet one or more of the conditions in § 173.422).
173.431(a)	Severe Level I	Offering (or accepting) for transportation in a type A package a quantity greater than that authorized.
173.431(b)	Severe Level I	Offering for transportation in a type B package a quantity greater than that authorized.
173.441	Severe Level I	Offering a package of radioactive material that exceeds allowable external radiation levels.
173.442(b)(1)	Severe Level II	Offering a package of radioactive material exceeding 122 degrees Fahrenheit on the external surface of the package. (Non-exclusive use)
173.442(b)(2)	Severe Level II	Offering a package of radioactive material exceeding 185 degrees Fahrenheit on the external surface of the package. (Exclusive use)
173.443(a)	Severe Level II	Offering a package of radioactive material with removable contamination in excess of 22 dpm/

		square cm.
173.443(b)	Severe Level II	Offering a package of radioactive material with removable contamination in excess of 220 dpm/square cm.
173.447	Severe Level I	Storing in one-area packages of radioactive material that exceed a total Transport Index of 50.
173.457(b)(3)	Severe Level I	Offering a fissile material, controlled shipment in a conveyance containing other packages of any Class 7 (radioactive) material required to bear one of the labels prescribed in 49 CFR 172.403.

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1.4.10.5 Illustration HM-1 - Agency Notification Letter

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John Doe, Director of Transportation
XYZ Government Agency
12345 Anywhere Lane
Washington, D.C. 12345
Subject: Violation of 49 C.F.R. *.*

Mr. Doe Agency Notification Letter

The Federal Motor Carrier Safety Administration has conducted an investigation into your agency's compliance with the Federal Hazardous Materials Regulations. Our investigation has discovered that your agency failed to properly classify, describe, package, and label a shipment of hazardous materials (*insert description of HM*) submitted to (*insert name of the carrier*) for transportation, on or about (*insert date(s)*), destined for (*insert location*).

Your Agency is in violation of 49 C.F.R. § (or §§) (*insert section number(s)*), in that you offered hazardous materials for transportation in commerce that was not properly classified, described, packaged, marked, labeled, and in condition for shipment (*insert specifics on shipment(s)*).

As a Federal Agency, the (insert agency name) is subject to and must abide by the Hazardous Material (HM) statutes (49 U.S.C. 5101 et seq.), and the regulations promulgated there under (49 C.F.R. Parts 100-185). Congress specifically excluded the United States Postal Service, as well as a department, agency, or instrumentality of the Government from all civil and criminal penalties under the HM Act. As the agency responsible for the enforcement of the hazardous material regulations within the transportation industry upon public highways, the Federal Motor Carrier Safety Administration is charged by Congress to assure a safe and

efficient transportation system. To improve safety upon the nation's highways the FMCSA has an elaborate compliance and enforcement program to bring about compliance by the private industry sector. The FMCSA also regulates HM transportation made on behalf of, and by, all governmental agencies. Consequently, this letter serves as notification of the discovered violations and is a demand for corrective action on the part of your agency.

To assist your agency in improving compliance, please submit a detailed report to my attention within 30 days of receipt of this letter. Your letter must outline the methods and procedures your agency is taking to correct the violations discovered during our investigation. My staff will review your reply letter and make recommendations, if necessary, to improve your agency's compliance with the HM regulations.

If further information is needed or if you wish to schedule an interview, please call (*insert name*) at (*insert telephone number*). If we do not hear from you within 30 days from receipt of this letter, the violation information will be forwarded to the Office of Inspector General for the Department of Transportation for further action. Thank you for your understanding in this matter.

Sincerely

(Insert Name)
State Director

cc: *The employee(s) responsible for the shipment*

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1.4.10.7 Illustration HM-3 - Properly Cite Violations***How do I properly cite violations of HM training requirements?***

The following violation codes and descriptions **should be used** to cite violations of the HM training requirements. The first table is to be used to cite violations against a motor carrier, including private motor carriers. The second table is to be used to cite violations against HM shippers, cargo tank manufacturers and re-qualification and maintenance facilities, and regulated entities, other than motor carriers.

For violations by motor carriers:**For Violations by Motor Carriers**

Primary	Secondary	Violation Description	Comment
177.800(c)	172.704(a)(1)	Failing to provide general awareness/familiarization training to hazmat employees.	Training must include training on the HM Table, shipping papers, marking, labeling & placarding.
177.800(c)	172.704(a)(2)	Failing to provide function-specific training to hazmat employees.	Training packages obtained from JJ Keller, Label Master, etc., do not normally include function-specific training.
177.800(c)	172.704(a)(3)	Failing to provide safety training to hazmat employees.	Training must include emergency response information, measures to protect the employee from HM hazards and methods and procedures for proper handling of HM packagings.
177.800(c)	172.704(c)	Failing to provide initial and/or recurrent HM employee training.	Select appropriate language.
177.800(c)	172.704(c)(ii)	Failing to provide initial HM employee training within 90 days after employment or a change in job function.	
177.800(c)	172.704(c)(2)	Failing to provide recurrent training at least once every 3 years.	Indicate date of last training received.
177.800(c)	172.704(d)	Failing to maintain a record of current hazmat employee training.	The record must include the employee's name, the date of the most recent training, a description, copy, or the

			location of the training materials used, the name and address of the person providing the training and certification that the employee has been trained & tested.
177.816(a)		Using a driver, to transport hazardous materials, that has not been trained in the applicable requirements of 49 CFR parts 390 through § 397.	Depending on the State of issuance, CDL holders with HM or tank endorsements might be in compliance with this requirement.
177.816(b)		Using a driver, to transport hazardous materials in a cargo tank, that has not received the required specialized training.	Depending on the State of issuance, CDL holders with HM or tank endorsements might be in compliance with this requirement.
177.816(b)		Using a driver, to transport hazardous materials in a portable tank with a capacity of 1,000 gallons or more, that has not received the required specialized training.	Depending on the State of issuance, CDL holders with HM or tank endorsements might be in compliance with this requirement.
177.816(d)		Failing to maintain a record of specialized training.	
177.816(d)		Using a driver, to transport hazardous materials in a cargo tank or portable tank with a capacity of 1,000 gallons or more, that has not received recurrent specialized training within the past 3 years.	

For Violations by HM Shippers, Cargo Tank Facilities or other Non-Motor Carriers personnel.

For Violations by HM Shippers, Cargo Tank Facilities or other Non-Motor Carriers

Primary	Secondary	Violation Description	Comment
172.702(b)	172.704(a) (1)	Failing to provide general awareness/familiarization training to hazmat employees.	Training must include training on the HM Table, shipping papers, marking, labeling & placarding.
172.702(b)	172.704(a) (2)	Failing to provide function-specific training to hazmat employees.	Training packages obtained from JJ Keller, Label Master, etc., do not normally include function-specific training.

172.702(b)	172.704(a) (3)	Failing to provide safety training to hazmat employees.	Training must include emergency response information, measures to protect the employee from HM hazards and methods and procedures for proper handling of HM packagings.
172.702(b)	172.704(c)	Failing to provide initial and/or recurrent HM employee training.	Select appropriate language.
172.702(b)	172.704(c) (ii)	Failing to provide initial HM employee training within 90 days after employment or a change in job function.	Select appropriate language.
172.702(b)	172.704(c) (2)	Failing to provide recurrent training at least once every 3 years.	Indicate date of last training received.
172.702(b)	172.704(d)	Failing to maintain a record of current hazmat employee training.	The record must include the employee's name, the date of the most recent training, a description, copy, or the location of the training materials used, the name and address of the person providing the training and certification that the employee has been trained & tested.

Was the HM training given to HAZMAT employees adequate?

This is a subjective evaluation that will be almost impossible to prove if the HAZMAT employer has provided training. Generally, function specific training is the area in which most companies fail to provide adequate training. If you believe the training is inadequate, you should be able to document specific job functions that were not covered by training. Examples would be the additional training requirements for specific commodities, such as radioactive material, explosives, and flammable cryogenics.

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1.4.10.9 Illustration HM-5 - Exhibit - Abstract 107

EXHIBIT ABSTRACT

EXHIBIT NUMBER 1

INVESTIGATION NUMBER: WW-XX-YY-US0ZZZ

SECTION NUMBER: 107.608(b)

DESCRIPTION: Transporting a hazardous material without having registered with the Department under Subpart G of Part 107.
(This description of the violation must be the same wording that is used in Part B of the Compliance Review, in the Statement of Charges of the Notice of Claim and on the cover sheet of the Case Report)

REMARKS: (This description of the violation should contain all of the required elements of proof)

On July 7, 2001, ABC Shipper offered for transportation to XYZ Trucking 27,216 kg (6,000 lbs.) of hazardous materials, Selenic acid, 8, UN1905, PG I, from Denver, CO to Kansas, City, MO, without first registering with the department as required under Subpart G of Part 107.

DOCUMENTS:

1. Copy of oral interview with RSPA indicating there is no record of ABC Shipper having registered with the department.
2. Copy of shipping paper for Selenic acid, 8, UN1905, PG I indicating there was 27,216 kg (20,000 pounds) of product offered by ABC Shipper to XYZ Trucking's trailer number 123 in Denver, CO with a final destination of Kansas City, MO and signed by driver Bill Jones.
3. Copy of the material safety data sheet provided by the shipper of the product indicating the DOT description as Selenic acid, 8, UN1905, PG I.
4. Copy of the record of duty status for driver Bill Jones dated from July 6, 2001 to July 8, 2001 indicating this driver drove tractor 49 and pulled trailer 123 from Denver, CO to Kansas City, MO
5. Copy of signed statement of carrier official and Vice President of Safety, Bill Hickory dated July 31, 2001.

1.4.10.10 Illustration HM-6 - Exhibit Abstract 172

EXHIBIT ABSTRACT

EXHIBIT NUMBER 1

INVESTIGATION NUMBER: WW-XX-YY-US0ZZZ

SECTION NUMBER: 172.704(a)(2)

DESCRIPTION: **Failing to provide hazardous materials employee with function specific training.**
(This description of the violation must be the same wording that is used in Part B of the Compliance Review, in the Statement of Charges of the Notice of

Claim and on the cover sheet of the Case Report)

REMARKS: (This description of the violation should contain all of the required elements of proof)

On July 5, 2001, Bogle Chemical Company used its hazardous materials employee, Joe Bogle, to fill twenty (20) drums with Selenic acid, 8, UN1905, PG I. This shipment had a final destination of Kansas, City, MO. Bogle Chemical Company failed to provide its hazardous materials employee with function specific training as required. During the trip four (4) drums of Selenic acid, 8, UN1905, PG I, overturned and began leaking which caused I-70 to be closed

An interview with Joe Bogle, the person who physically performed the closure process for the twenty (20) drums involved in this shipment revealed that he had not been provided training on the proper procedures to follow when closing a drum and was both unaware of the written closure instructions which were provided by the manufacture of the package and unable to produce a copy of the closure instructions. A subsequent interview with the President, Don Bogle discovered that the company had no training program to address filling and closing of drums.

A discussion with officials at Russell-Stanley Corporation, the manufacturer and provider of the specification drums to Bogle Chemical Company, determined the closure instructions were provided. A written record was maintained by Russell-Stanley Corporation.

DOCUMENTS:

1. Copy of shipping paper for Selenic acid, 8, UN1905, PG I indicating there was 9,072 kg (20,000 pounds) of product loaded by the shipper on ABC Trucking's trailer number 123 in Denver, CO with a final destination of Kansas City, MO and signed by driver Bill Jones.
2. Copy of the material safety data sheet provided by the shipper of the product indicating the DOT description as Selenic acid, 8, UN1905, PG I.
3. Copy of Kansas Highway Patrol report number 1234567 dated July 7, 2001 indicating there was a leak of hazardous materials, that Interstate 70 was closed in both directions for three hours because of the leaking hazardous materials and that the probable cause of the leak was improper blocking and bracing.
4. Copies of photographs taken by the Kansas Highway Patrol documenting the incident scene.
5. Copy of signed statement of Joe Bogle, hazardous materials employee with Bogle Chemical Company dated August 15, 2001.
6. Copy of signed statement of Don Bogle, President of Bogle Chemical Company dated August 15, 2001.

1.4.10.11 Illustration HM-7 - Exhibit Abstract 173

EXHIBIT ABSTRACT

EXHIBIT NUMBER 1

INVESTIGATION NUMBER: WW-XX-YY-US0ZZZ

SECTION NUMBER: 173.24(b)(1)
DESCRIPTION: **Transporting a hazardous material in a packaging that has an identifiable release of hazardous materials to the environment.**

(This description of the violation must be the same wording that is used in Part B of the Compliance Review, in the Statement of Charges of the Notice of Claim and on the cover sheet of the Case Report)

REMARKS: (This description of the violation should contain all of the required elements of proof)

On July 7, 2001, ABC trucking used its driver, Bill Jones, to transport hazardous materials, Selenic acid, 8, UN1905, PG I, from Denver, CO to Kansas, City, MO in company vehicle #301. The drums had an identifiable release of hazardous materials to the environment. Vehicle # 301 was inspected at the Goodland, Kansas inspection area (Mile marker 17 on I-70 eastbound). During this inspection the Kansas Highway Patrol discovered that the bungs for four drums of Selenic acid, 8, UN1905, PG I had leaking and had spilled approximately 94 liters (25 gallons) of hazardous material inside the trailer.

DOCUMENTS:

1. Copy of shipping paper for Selenic acid, 8, UN1905, PG I indicating there was 9,072 kg (20,000 pounds) of product loaded by the shipper on ABC Trucking's trailer number 123 in Denver, CO with a final destination of Kansas City, MO and signed by driver Bill Jones.
2. Copy of the material safety data sheet provided by the shipper of the product indicating the DOT description as Selenic acid, 8, UN1905, PG I.
3. Copy of the record of duty status for driver Bill Jones dated from July 6, 2001 to July 8, 2001 indicating this driver drove tractor 49 and pulled trailer 123 from Denver, CO to Kansas City, MO
4. Copy of Kansas Highway Patrol report number 1234567, dated July 7, 2001, indicating there was a leak of hazardous materials.
5. Copies of photographs taken by the Kansas Highway Patrol documenting the incident scene.
6. Copy of signed statement of carrier official and Vice President of Safety, Bill Hickory dated July 31, 2001.

1.4.11 Compliance Review of HM Carriers

[CR of HM Carriers - General](#)

[Part 107 – Registration of Persons Who Transport Hazardous Materials](#)

[Part 130 - Oil Spill Prevention And Response Plans](#)

[Part 171 - Incident Reporting](#)

[Part 172 – Hazard](#)

[Part 173 – Packaging and Loading](#)

[Part 177 – HM Carrier Regulations](#)

[Part 180 – Carrier Regulations](#)

[Part 397 – HM Driving and Parking](#)

[Part 385 - Subpart E Hazardous Materials Safety Permit Program](#)

[Illustration HM-8 Exhibit Extract for Part 107](#)

[Illustration HM-9 Exhibit Extract for Part 171](#)

[Illustration HM-10 CDL and HM Training](#)

[Illustration HM-11 Exhibit Extract for Part 172](#)

[Illustration HM-12 Exhibit Extract for Part 173](#)

[Illustration HM-13 Exhibit Extract for Part 177](#)

[Illustration HM-14 Exhibit Extract for Part 180](#)

[Illustration HM-15 Exhibit Extract for Part 397](#)

1.4.11.1 CR of HM Carriers - General

What should I do when I discover an HM Motor Carrier is also an HM Shipper?

If a carrier is also a shipper, a compliance review of the motor carrier operations will be conducted. The shipper's operation will also be reviewed for compliance.

If you discover the HM motor carrier is a shipper, make certain to follow the procedures set forth in the section entitled "Compliance Review of HM Shippers" to ensure shipper compliance.

To assist you in conducting compliance reviews on HM Carriers, [checklists](#) have been provided to facilitate the identification of violations of the hazardous materials regulations.

How should I complete the CAPRI forms, when I discover the HM shipper is also a motor carrier?

The CAPRI forms should indicate the information about the motor carrier. Under Part A of

the form, indicate the type of company is a carrier/shipper operation.

- Under Part B of the form, indicate the violations that were found during the review for both the motor carrier and shipper operations.

Under Part C of the form, indicate all parts reviewed and that during an HM motor carrier review it was discovered that the carrier was also a shipper.

Can a motor carrier/shipper review be uploaded?

Yes. The motor carrier/shipper review completed at the principal place of business can be uploaded into the Motor Carrier Management Information System (MCMIS).

1.4.11.2 Part 107 – Registration of Persons Who Offer or Transport

[Investigative Procedures](#)

[CAPRI Procedures](#)

[Enforcement Procedures](#)

Compliance Review Part 107 - Investigative Procedures

What are the procedures for determining a motor carrier compliance with the RSPA Registration requirements?

If applicable, determine whether the motor carrier has registered with the Research and Special Programs Administration (RSPA) in accordance with § 107.608. If a motor carrier cannot produce evidence of registration, but claims to be registered, a 10 working day period should be provided to the company to produce evidence of registration, or evidence of registration could be verified at <http://gotham.fmcsa.dot.gov/>.

What should I do with an HM shipper that should be registered, but is not?

If the shipper is not currently registered with the RSPA, inform a high-level company official that they must register immediately for each registration year in which they engaged in activities covered by the registration program. If the shipper submits complete and accurate proof of registration within 10 working days after closeout of the CR, enforcement action should not be initiated. **If the shipper fails to register within the 10 working days, enforcement action should be initiated.**

Compliance Review Part 107 - CAPRI Procedures

What are the Acute and Critical Regulations for Part 107?

There are **no** violation cites in Part 107 that have been designated as acute or critical regulations. However, the violation listed below has been designated as Severe Level II and should be considered for enforcement as warranted.

Acute and Critical Regulations for Part 107

Citation	Type	Description
107.608	Severe Level	Offering a hazardous material for transportation without having registered with the Department of Transportation, under Subpart G

	****	of Part 107.
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1.4.11.3 Part 130 - Oil Spill Prevention and Response Plans

When do I need to check for a motor carrier's written oil spill prevention and response plan?

If the motor carrier transports petroleum oil in packages having a capacity of 3,500 gallons or more, request to examine the motor carrier's written oil spill prevention and response plan.

How is Petroleum oil defined in the regulations?

Petroleum oil means any oil extracted or derived from geological hydrocarbon deposits, including fractions thereof. This includes fuel oil, motor oil, and other similar materials.

Which requirement must an oil spill prevention and response plan meet?

Verify whether the plan meets the requirements in § 130.31.

What should I be aware of when I cite a motor carrier for a violation of Part 130?

The requirements of this part do not apply to—

- Any mixture or solution in which oil is in a concentration by weight of less than 10 percent.
- Transportation of oil by aircraft or vessel.
- Any petroleum oil carried in a fuel tank for the purpose of supplying fuel for propulsion of the transport vehicle to which it is attached.
- Oil transport exclusively within the confines of a non-transportation-related or terminal facility in a vehicle not intended for use in interstate or intrastate commerce (see 40 CFR part 112, appendix A).

1.4.11.4 Part 171 - Incident Reporting

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Compliance Review Part 171 - CAPRI Procedures for Part 171

What types of regulations affect the safety rating?

There are two types of violations identified in 49 CFR Part 385 – Safety Fitness Procedures that affect the safety rating of a motor carrier. They are acute violations and critical violations. The following definitions are provided for your reference:

Acute Violations - Acute regulations are those identified as such where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier.

Critical Violations - Critical regulations are those identified as such where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls. An example of a critical regulation is § 395.3(a)(1), requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

What are the Acute and Critical Regulations for Part 171?

There are two violation cites in Part 171 that have been designated as critical regulations. The table below lists the violations that would affect an HM motor carrier's safety rating.

**Acute and Critical Regulations Part
171**

Citation	Type	Description
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171.2(d)	Severe Level II	Offering or accepting a HM shipment in commerce without being registered.....
171.15	Critical	Carrier failing to give immediate telephone notice of an incident involving hazardous materials. Number Checked: The number of hazardous materials incidents checked which required immediate telephone notice.
171.16	Critical	Carrier failing to make a written report of an incident involving hazardous materials. Number Checked: The number of hazardous materials incidents checked which required a written report.

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1.4.11.5 Part 172 - Hazard

[Investigative Procedures](#)
[CAPRI Procedures for Part 172](#)
[Enforcement Procedures](#)

Compliance Review Part 172 - Investigative Procedures

Shipping Papers Part 172 Subpart C

How do I check a motor carrier facility for shipping paper compliance?

Tour the company's facility and review the material safety data sheets to become familiar with all of the shipped and/or transported HM. Look for the presence of any vehicles designed to transport HM and the placards, if any, affixed to the vehicles. For compliance reviews (CR) of motor carriers, review the carriers profile and roadside inspection reports to discover previously unknown types of transported HM. If only pre-printed forms are used for shipping papers, determine whether there is an appropriate form for each proper shipping name of HM shipped and/or transported. Verify that the shipper and/or motor carrier has a sufficient system to ensure that these forms are used as complete and accurate shipping papers. Examine shipping papers given to local and over the road drivers as they arrive at the dock. This is a good opportunity to determine whether drivers and dock personnel are familiar with the HMRs.

How long must a motor carrier retain shipping papers?

For hazardous waste, the shipping paper copy (the hazardous waste manifest) must be retained for three (3) years after the material is accepted by the initial carrier. HM, motor carriers must retain hazardous materials shipping papers for one year after acceptance by the carrier. This requirement is found in § 177.817(f). Safety investigators of the Federal Motor Carrier Safety Administration will generally cite the violation for failure to retain these shipping papers whenever the violation is discovered. Keep in mind that shipping papers may be retained electronically.

How many shipping paper documents should be examined for compliance?

One shipping paper, at a minimum, should be examined for each proper shipping name or class/division of HM offered or transported. Sample shipping papers from the previous 12 months for completeness, content, and accuracy. If substantial noncompliance is discovered from the minimum number of reviewed shipping papers, additional shipping papers should be examined to better determine the extent of noncompliance. Make comments and provide explanations in Part C of the CR report as appropriate.

When performing a CR on a for-hire motor carrier of HM, document violations by HM shippers that provided improperly prepared shipping papers. Discuss the appropriate handling of these violations with the Division Administrator/State Director.

Are waybills and manifests the same as a shipping paper?

Keep in mind that manifests and bills reviewed in the motor carriers office may not be the document used as the shipping paper during transportation.

Is the EPA Uniform Hazardous Waste Manifest a shipping paper?

Yes. The EPA and DOT agreed to allow the Uniform Hazardous Waste Manifest (UHWM) to serve as a shipping paper. The UHWM must contain the information required by the HMRs. If hazardous waste is being offered for transportation, review the company's compliance with the hazardous waste manifest requirements in § 172.205.

Where should the emergency response information be on a shipping paper?

Verify that emergency response information is available during transportation as required by § 172.600. This requirement may be met a number of different ways including attaching an MSDS or referencing the Emergency Response Guidebook. Check the shipping papers for the emergency response telephone number in accordance with § 172.604. An individual who is knowledgeable and can provide appropriate information in the case of an emergency must answer the number to be in compliance with this requirement. Pagers and answering machines are not acceptable. If the offerer uses a third party provider for this function the Safety Specialists should verify that the offerer has a valid contract with the provider. [See Illustration HM-2.](#)

How do I prepare an enforcement case on a motor carrier if the HM motor carrier is also an HM shipper?

If there are substantial violations found during a compliance review of the HM motor carrier/shipper in the area of shipper responsibilities, enforcement should for shipper-type violations (e.g. violations of Part 172, not violations of Part 177). You should not cite and take enforcement in Part 172 and Part 177 for the same violation. This is known as pyramiding. An example of pyramiding a violation is, § 172.201-failing to prepare a shipping paper and § 177.817(a)-transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper.

HM Training Part 172 Subpart H***What employees at a motor carrier facility need to have HM training?***

Employees responsible for compliance with any HM regulation include the safety director, rate and billing clerks, dockworkers, city pickup and over the road drivers, drivers, dispatchers, and any other persons engaged in activities covered by the Hazardous Materials Regulations (HMRs).

How do I determine if motor carrier employees who perform hazardous materials are properly trained?

1. Interview employees engaged in hazardous materials activities.
 - Determine the employees knowledge of the HM regulations related to their job function,
 - Review internal procedures for handling and preparing HM packages for transportation that may differ from published company policy and the HMRs, and
 - Determine whether the employee received appropriate training.
2. Make note of all interviewed employees who are not familiar with the (HMRs) applicable to their responsibilities. This lack of knowledge is an indication of an ineffective training program for HAZMAT employees, and a violation of § 177.800(c) for motor carriers, and § 177.816 for drivers.

3. **Determine whether HAZMAT employees are trained and the related documentation is maintained.** Pay particular attention to the requirement to provide function specific training § 172.704(a)(2). Training must cover all functions related to the HMRs, including loading, unloading, reviewing shipping papers, etc.
4. **Review the description of the training materials used to meet the training requirements.** If the actual training materials to verify whether all subject areas, required by § 172.704(a), are covered by the training.
5. **Review security awareness training for all hazmat employees.** See the Security Section for more details on violations of the HM training requirements related to security.
6. **Review in-depth security training for all hazmat employees with functions covered or affected by the Security Plan.** See the **Security Section** for more details on violations of the HM training requirements related to security.

Does the Commercial Drivers Licenses satisfy the HM Training Requirements in Part 172?

The **Illustration HM-10** below is a summary of the Pipeline and Hazardous Materials Safety Administration position on the use of the CDL and HM endorsement to satisfy the HM training requirements.

Compliance Review Part 172 - CAPRI Procedures for Part 172

How do I properly cite violations of HM training requirements?

See [Illustration HM-3](#).

What are the Acute and Critical Regulations for Part 172?

There are **no** violation cites in Part 172 that have been designated as acute or critical regulations.

What violations types should be consider when enforcement action is contemplated?

Enforcement should be considered if one or more of the **Severe** violations listed below are discovered.

Acute and Critical Regulations for Part 172

Citation	Type	Description
172.200(a)	Severe Level I	Offering a hazardous material without preparing a shipping paper. (Use for nothing prepared).
172.202(a)	Severe Level II	Failing to enter the proper description of a hazardous material on a shipping paper. (Use for incorrect or incomplete shipping papers or to consolidate multiple shipping paper violations).
172.203(a)	Severe Level II	Failing to enter on a shipping paper the notation "DOT-E" followed by the exemption number.
172.203(c)(1)	Severe Level II	Failing to enter the hazardous substance constituent on a shipping paper when not identified by the proper shipping name.

172.203(d)	Severe Level II	Failing to include on shipping papers for a shipment of radioactive material physical and chemical form, activity, and category of label.
172.203(m)	Severe Level I	Failing to enter the words "Poison Inhalation Hazard" or "Toxic Inhalation Hazard" on the shipping paper when required.
172.203(n)	Severe Level II	Failing to enter the word "HOT" on the shipping paper for elevated temperature materials as required.
172.205(a)	Severe Level I	Offering a hazardous waste without a hazardous waste manifest.
172.205(a)	Severe Level II	Failing to properly prepare a hazardous waste manifest. (Use for an incorrect or incomplete hazardous waste manifest).
172.205(b)	Severe Level II	Failing to prepare the hazardous waste manifest in accordance with 40 CFR Part 262.
172.313(a)	Severe Level I	Failing to mark a package of hazardous materials with the words "Inhalation Hazard" when required.
172.301(a)(1)	Severe Level II	Failing to properly mark a non-bulk package of hazardous material with the proper shipping name and identification number.
172.320(a)	Severe Level II	Failing to mark a package containing Class 1 material with the appropriate EX-number. (Check for applicable exceptions before citing).
172.326	Severe Level II	Failing to properly mark a portable tank of hazardous materials with the proper shipping name and identification number.
172.326(c)(2)	Severe Level II	Failing to provide to a motor carrier the required identification numbers for a portable tank.
172.328(a)(1)	Severe Level II	Failing to provide to a motor carrier the required identification numbers for a cargo tank.
172.400(a)	Severe Level II	Failing to properly label a package of hazardous materials.
172.403	Severe Level II	Failing to affix the correct label to a package of radioactive material.
172.506(a)(1)	Severe Level II	Failing to provide the required placards to a motor carrier.
172.600(c)(1)	Severe Level II	Failing to provide emergency response information.
172.604(a)	Severe Level II	Failing to provide an emergency response telephone number.
172.604(a)(1)	Severe Level II	Failing to provide an emergency response telephone number that is monitored at all times that a hazardous material is in transit.
172.604(a)(2)	Severe Level II	Failing to provide the 24-hour emergency response telephone number of a person who is knowledgeable of the hazards and characteristics of the hazardous materials being shipped (of a person who does not have

		comprehensive emergency response and accident mitigation information).
172.704(a)	Severe Level II	Failing to train hazardous material employees as required. (Use when at least 10% of hazardous material employees are not trained as required).

Note: The Acute and Critical Regulations for HM Training violations for motor carriers and drivers will be found under the Part 177 write-up in this manual.

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1.4.11.6 Part 173 – Packaging and Loading

[Investigative Procedures](#)
[CAPRI Procedures for Part 173](#)
[Enforcement Procedures](#)

Compliance Review of HM Carriers - Part 173 - Investigative Procedures

Do packaging and loading requirements apply to motor carriers?

Many of the packaging and loading requirements do apply equally to shippers or motor carriers. Motor carriers are prohibited from accepting packaging that does not meet all requirements of the regulations. In addition, if the motor carrier is performing a loading function, then the same regulations apply as though a shipper was performing the loading function. See [Illustration HM-4](#) - HM Package Inspection Questions & Answers.

Is there a citation for general non-compliance with the packaging requirements of the HMRs?

Yes. In § 171.2, there is a general requirement prohibiting offering, marking, representing, certifying, or selling a package or container as meeting the Hazardous Materials Regulations (HMR) when it does not. Note that this citation is in Part 171, not 173.

How do you check a motor carrier's compliance with Part 173 regulations?

The packaging requirements in Part 173 specifically address the release of hazardous materials from a packaging. When checking for compliance of the packages, determine the type of packaging being used. The type of packaging must be authorized under the HMRs to transport the hazardous materials being shipped or transported. The package must not leak and must be designed in accordance to the DOT regulations.

What regulations in Part 173 specifically discuss the integrity of packages and their performance standards?

There are numerous regulations that discuss package integrity; however, here are a few specific regulations you should check for compliance:

- § 173.24 - General Requirements and for packaging and packages
- § 173.24b - Additional general requirements for bulk packagings
- § 173.32 - Requirements for the use of portable tanks
- § 173.33 - Hazardous materials in cargo tank motor vehicles
- § 173.35 - Hazardous materials in intermediate bulk containers (IBCs).
- § 173.301 - General requirements for shipment of compressed gases in cylinders and spherical pressure vessels
- § 173.315 - Compressed Gases in Cargo Tanks and Portable Tanks

Part 173 - CAPRI Procedures for Part 173

What are the Acute and Critical Regulations for Part 173?

There are **no** violation cites in Part 173 that have been designated as acute or critical regulations.

What violations types should be consider when enforcement action is contemplated?

Enforcement should be considered if one or more of the **Severe****** violations listed below are discovered.

Acute and Critical Regulations for Part 173

Citation	Type	Description
173.24(b)(1)	ACUTE	Transporting hazardous materials in a portable tank that has an identifiable release of hazardous materials to the environment.
173.24(b)(1)	ACUTE	Transporting hazardous materials in a non-bulk packaging that has an identifiable release of hazardous materials to the environment.
173.24b(d)(2)	Severe Level I	Loading a cargo tank with a hazardous material that exceeds the maximum weight of lading marked on the specification plate.
173.33(a)	Severe Level I	Offering or accepting for transportation a hazardous material in an unauthorized cargo tank motor vehicle.
173.33(a)(2)	Severe Level I	Transporting or loading two or more materials in a cargo tank motor vehicle that resulted in an unsafe condition (fire, explosion, etc.)
173.33(b)(1)	Severe Level I	Transporting in a cargo tank motor vehicle a hazardous material that had a dangerous reaction when in contact with the tank.
173.33(c)(5)	Severe Level I	Loading a Division 6.1 material in a cargo tank having a maximum allowable working pressure of less than 25 psig.
173.33(e)	Severe Level I	Transporting (Division 6.1 material, oxidizer liquid, liquid organic peroxide, or corrosive liquid) in cargo tank piping without bottom damage protection devices meeting the requirements of § 178.337-10 or § 178.345-8(b).
173.33(e)	Severe Level I	Transporting (Division 6.1 material, oxidizer liquid, liquid organic peroxide, or corrosive liquid) in cargo tank piping while using a sacrificial device to satisfy accident damage protection requirements.
173.431(a)	Severe Level I	Offering (or accepting) for transportation in a type A package a quantity greater than that authorized.
173.447	Severe Level I	Storing in one-area packages of radioactive material that exceed a total Transport Index of 50.

Note: The hazardous materials regulations have extensive individualized requirements for some materials or groups of materials making a complete listing of violations for which enforcement should be considered difficult or impossible. If you discover a violation that is not on this list but believe it warrants enforcement, seek additional guidance from your supervisor or a hazardous materials specialist.

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The statement of charges is found in the “Remarks” section of the Exhibit of Abstract. The statement of charges for a Part 173 violation should read as follows:
On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle transporting «PROPER SHIPPING NAME & CLASS», a hazardous material, in interstate commerce from «ORIGIN» to «DESTINATION». During this transportation the hazardous material leaked from the packaging.

1.4.11.7 Part 177 – Carrier Regulations

[Investigative Procedures](#)
[CAPRI Procedures for Part 177](#)
[Enforcement Procedures](#)

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Acute and Critical Regulations for Part 177

Citation	Type	Description
177.800(c)	Critical	Failing to instruct a category of employees in hazardous materials regulations. Number checked is the number of employees checked to ensure they were instructed in hazardous materials regulations.
177.800(c)/172.704 (a)(1)	Severe Level II	Failing to provide General Awareness Training.
177.800(c)/172.704 (a)(2)	Severe Level II	Failing to provide Function Specific Training.
177.800(c)/172.704 (a)(3)	Severe Level II	Failing to provide Safety Training.
177.800(c)/172.704 (C)	Severe Level II	Failing to provide Initial or Recurrent Training
177.801	Acute	Transporting a forbidden material.
177.817(a)	Critical	Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper. Number checked is the number of instances checked for compliance with § 177.817(a).
177.817(e)	Critical	Failing to maintain proper accessibility of shipping papers. Number checked is the number of instances checked

		for compliance with § 177.817(e).
177.817(f)	Severe Level II	Transporter fails to maintain a copy of the HM shipping paper as prescribed for 375 days (365 days after Jan. 9, 2006) after the date accepted by the motor carrier.
177.823(a)	Critical	Moving a transport vehicle containing hazardous material that is not properly marked or placarded. Number checked is the number of instances checked for compliance with § 177.823(a).
177.834(i)	Severe Level I	Failing to attend a cargo tank during loading (or unloading).
177.834(j)	Severe Level I	Transporting a Hazardous material in a cargo tank while failing to have all manhole closures closed and secured (all valves and other closures in the liquid discharge system closed and free of leaks).
177.841(e)	Acute	Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals unless an exception in § 177.841(e)(i) or (ii) is met.
177.834(a)	Severe Level II	Failing to brace containers of hazardous materials to prevent relative motion between containers.
177.835(a)	Severe Level II	Loading into or on, or unloading a Class 1 (explosive) material from a motor vehicle with the engine running.
177.848(d)	Severe Level I	Loading hazardous materials not in accordance with the segregation table.
177.848(f)	Severe Level I	Transporting, loading or storing Class 1 materials not in accordance with the compatibility table.

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1.4.11.8 Part 180 – Carrier Regulations

[Investigative Procedures](#)
[CAPRI Procedures for Part 180](#)
[Enforcement Procedures](#)

Compliance Review of HM Carriers -Part 180 - Investigative Procedures – For Motor Carriers who are not registered with the Department to perform their own tests and inspections

What should I check to confirm motor carrier compliance?

Examine cargo tanks as they arrive at the terminal and record information off the specification plate. These specification plates are located at or near the front of the cargo tank, normally close to the landing gear on either the right or left side. Pay particular attention to the specification of the cargo tank. This specification will be preceded by the letters MC or DOT and three numbers. An example would be MC 307. Record this

specification number along with the serial number and the date of manufacturer. Request certificates of compliance from the motor carrier, along with test and inspection reports for cargo tanks used by the motor carrier for more than thirty days. Verify that all cargo tanks have the required tests and inspections and confirm that information recorded from specification plates match the paper work provided to you by the motor carrier.

What do I look for to confirm that the motor carrier has all the required certificates of compliance?

Review equipment lists and ask the motor carrier to identify all specification cargo tanks if the equipment list does not indicate this information. You can also confirm this identification by reviewing shipping papers and identifying tanks that have been used to transport these products.

Once you have identified all of the specification cargo tanks, request the motor carrier to provide you the certificates of compliance and U1A forms, where applicable. The requirement can be found at § 180.417(a).

What do I look for to confirm that all cargo tanks being used by the motor carrier are tested and inspected?

Review equipment lists and ask the motor carrier to identify all specification cargo tanks if the equipment list does not indicate this information. You can also confirm this identification by reviewing shipping papers and identifying tanks that have been used to transport these products. Once you have identified all of the specification cargo tanks, request the motor carrier to provide you the most recent test and inspection report for each type of test required to be performed. The test that are required to be performed on a specification cargo tank and some non-specification cargo tanks are listed in the table in 180.407(c).

They are as follows: External Visual, Internal Visual, Pressure Test, Leakage Test, Lining Test and Thickness Test. Note that not all tests may be required for a specific tank. Refer to the specific section following 180.407(c) to determine what tests are required and detail information concerning what items are actually required to be tested and inspected.

Compliance Review of HM Carriers - Part 180 - CAPRI Procedures for Part 180

How do I properly cite violations of HM training requirements?

See [Illustration HM-3](#).

What are the Acute and Critical Regulations for Part 180?

Violations of Part 180 that have been designated as critical or acute are listed in the table below.

What violation types should be considered when enforcement action is contemplated in Part 180?

In addition to the critical and acute violations listed in Appendix B to Part 385 (that should be considered for enforcement) we have also identified Severe Violations – Level 1 and Severe Violations – Level 2. They are defined as follows:

Severe Violations – Level I - These are violations within the HMRs and demand immediate corrective actions by the facility. Enforcement action is taken when a violation is discovered during the review that is identified as severe in the following table.

Severe Violations – Level II - These violations of the HMRs indicate a breakdown in the management and/or operational controls of the facility. When a violation is discovered that

is a severe violation – level 2, that results in an accident or hazardous material incident, or contributes to either occurrence, enforcement action should be taken. Otherwise, enforcement action for a severe violation – level 2 is taken upon the discovery of an unacceptable level of compliance. Compliance with Severe Violations – Level II is generally considered unacceptable when the violation frequency meets or exceeds 10%.

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Acute and Critical Regulations for Part 180

Citation	Type	Description
180.407(a)	Critical	Using a specification cargo tank that has not been inspected or retested in accordance with § 180.407. Number checked is the number of instances checked for compliance with § 180.407(a).
180.407(b)(1)	Severe Level I	Failing to test and inspect a cargo tank that shows evidence of bad dents, corroded or abraded areas, leakage, or any other condition that might render it unsafe for transportation.
180.407(b)(2)	Severe Level I	Failing to test and inspect a cargo tank that has been in an accident and has been damaged to an extent that may adversely affect its lading retention capability.
180.407(b)(5)	Severe Level I	Failing to conduct a test or inspection on a cargo tank when required by the Department of Transportation.
180.407(c)	Critical	Failing to periodically test and inspect a cargo tank. Number checked is the number of cargo tanks checked for compliance with periodic test and inspection requirements.
180.407(g)(3)	Severe Level I	Failing to perform a wet fluorescent magnetic particle test on an MC 330/331 cargo tank.
180.417(a)(1)	Critical	Failing to retain cargo tank manufacturer's data report or certificate and related papers, as required. Number checked is the number of cargo tanks checked for compliance with § 180.417(a)(1). Note: This is an Owners Requirement.
180.417(a)(2)	Critical	Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required. Number checked is the number of cargo tanks checked for compliance with § 180.417(a)(2). Note: This is a motor carrier requirement.
180.417(b)(3)	Severe Level I	Failing to retain a copy of test and inspection reports as required.

180.417(c)(2)

Severe Level I

Failing to retain a copy of the addition report for MC330/331 cargo tanks as required.

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1.4.11.9 Part 385 - Subpart E Hazardous Materials Safety Permit Program

[General Information](#)

[Communication Program](#)

[Investigative Procedures](#)

[CAPRI Procedures for Part 385 Subpart E](#)

[Enforcement Procedures](#)

General Information Part 385 Subpart E HMSP

Who must hold a safety permit? - §385.403

The HMSP rule is located in 49 CFR Part 385 Subpart E. Subpart E of the regulations specifies that a HMSP is required of any motor carrier transporting any of the following hazardous materials:

1. A highway route-controlled quantity of a Class 7 (radioactive) material;
2. More than 25 kg (55 pounds gross weight per transport vehicle) of a Division 1.1, 1.2, or 1.3 (explosive) material or an amount of a Division 1.5 (explosive) material requiring placarding under 49 CFR 172;
3. More than one liter (1.08 quarts) per package of a material poisonous by inhalation, that meets the criteria for hazard zone A;
4. A material poisonous by inhalation, that meets the criteria for hazard zone B, in a bulk packaging (capacity greater than 460 L (119 gallons));
5. A material poisonous by inhalation, that meets the criteria for hazard zone C, or hazard zone D, in a packaging having a capacity equal to or greater than 13,248 L (3,500 gallons); or
6. A shipment of compressed or refrigerated liquefied methane or liquefied natural gas, or other liquefied gas with a methane content of at least 85 percent, in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

After January 1, 2005, a motor carrier transporting any of the above quantities of hazardous materials in interstate, intrastate or foreign commerce must have a HMSP before the expiration date of their current USDOT number (the two-year schedule is found in 49 CFR 390.19). This process allows for a 2-year phase in period for the HMSP program. If a motor carrier transporting any of the above referenced materials and quantities did not have a USDOT number prior to January 1, 2005, then the motor carrier must have a HMSP.

Do the HMSP requirements only apply to the primary hazard class?

No. The HMSP is required for all materials that meet any of the definitions above, not only those that have a primary hazard class of 2.3 or 6.1. For example, anhydrous ammonia is a non-flammable gas (Division 2.2) but does meet the definition of a hazard zone D (Division 2.3) and therefore is a permit-required material.

What conditions does a carrier have to satisfy to be issued a HMSP?

The formal list can be found in § 385.407. The list below is a basic outline.

1. The carrier must have a Satisfactory safety rating
2. The carrier must certify (Form MCS 150B) that it has a satisfactory security program, including a security plan as specified in Part 172, a communications plan and the required security training.
3. The carrier must not:
 - 3.a. Have a crash rate in the top 30 percent of the national average, or
 - 3.b. Have a driver, vehicle, hazardous materials, and/or total out-of-service rate in the top 30 percent of the national average.
4. The carrier must be registered with PHMSA.
5. Additionally, the HMSP notification letter issued by MCMIS requires the motor carrier to fax a copy of its MCS-90 or MCS-82 to HQ. HQ must receive proof of financial responsibility before processing any HMSP applications.

What additional information is required to be carried on board a vehicle that is transporting a material that requires a hazardous materials safety permit?

The requirements can be found in § 385.415(a).

1. A copy of the safety permit or another document showing the permit number that clearly indicates the number is the FMCSA HMSP number.
2. Carriers that transport Div 1.1, 1.2, 1.3 materials or highway route controlled quantities of radioactive materials (Class 7) are required to carry a written route plan that meets the requirements of § 397.67 or § 397.101.
3. The telephone number, including area code or country code, of an employee of the motor carrier or representative of the motor carrier that is familiar with the routing of the permitted materials.

What is a Temporary HMSP?

A Temporary HMSP is a document issued to a motor carrier that has applied for the HMSP but does not have a safety rating. Thus, they can transport hazardous materials that require the HMSP while they wait for a compliance review and the safety rating so they can finish the process. Before the Temporary HMSP is issued the motor carrier is required to be operating in full compliance with the FMCSRs and the HMRs including the minimum financial responsibility requirements of Part 387.

Are there special procedures for conducting a compliance review on a carrier that is required to have a HMSP?

Yes. Investigators will be required to verify the validity of a permit, if required, and check compliance with the operational requirements required for HM permitted loads (e.g. the communication plan). In addition, compliance with state equivalent regulations will be checked for intrastate trips transporting permitted materials and safety ratings will be issued to intrastate carriers that hold a HMSP. All other CR procedures should be followed.

When should a security contact review be conducted on a permitted carrier?

A security contact review will generally be conducted each time a compliance review is conducted on a carrier that is required to have an HMSP. The SCR is optional if the carrier has received an SCR within the past 12 months.

What procedures should be followed if during a compliance review of a motor carrier that requires a HMSP, it is found that the carrier does not have an HMSP?

In this case the investigator should indicate on Part A of the compliance review that a permit is required and cite a violation of 385.403. Enforcement action should be taken for this violation. The carrier is not authorized to transport permitted HM until a HMSP (or a Temporary HMSP) is obtained.

What if a carrier makes it impossible to conduct a compliance review needed for an HMSP?

If a carrier fails to keep an appointment and several attempts have been made to conduct the HMSP compliance review the situation should be considered as a refusal to conduct an HMSP compliance review.

If the carrier is a New Entrant, then the guidelines within the New Entrant program should be followed to remove the carrier from consideration.

If the carrier is not a New Entrant, then use established procedures to obtain access for the purposes of conducting a CR (i.e. subpoena, law enforcement, etc)

If a carrier has a THMSP and is non-responsive, the Division must contact the HM Division at HQ to have the THMSP automatic renewal process stopped. This will lead to the expiration of the motor carriers THMSP.

When citing an acute violation of a motor carriers security plan, what citation should be used?

For an acute violation of a motor carriers security plan, inspectors should cite 49 CFR 172.800(b). Citing this code will trigger MCMIS to begin HMSP suspension proceedings.

If a security plan violation is not serious enough to warrant triggering proceedings to suspend or revoke an HMSP, please cite the appropriate paragraph(s) under § 172.802.

How should Route Plan Violations be cited for intrastate and interstate carriers?
Intrastate Cite under 385 with 397 as federal equivalent (so it affects safety rating)

Interstate Cite under 397 (so it affects safety rating)

What are the procedures for suspension or revocation of a permit?

When any the following actions have been discovered or occur, as a first offense, the motor carrier will be subject to suspension of its HMSP or Temporary HMSP until the action is corrected or revocation of the permit for 365 days. The following list exhibits the violations listed in 49 CFR 385.421(a) and the resulting consequences of those actions:

1. Failure to renew its application (MCS-150B): Automatically checked by MCMIS.
 - 1.a.The carriers HMSP will expire, and no longer exist.
 - 1.b.An Expiration Notice will be sent to the carrier.
2. Providing false or misleading information on its application: Inspector must cite §390.35 (pertaining to MCS-150B).
 - 2.a.A 15-day letter will be sent to the motor carrier (see below).
 - 2.b.If the carrier does not provide the Division Office (DO) proof of rectification of the problem within 15 days, an official Intent to Suspend or Revoke letter will be issued to the carrier.
3. Motor carrier is issued a final safety rating less than Satisfactory: Automatically checked by MCMIS.
 - 3.a.A Suspension or Revocation letter will be issued to the carrier.
4. Failure to maintain a satisfactory security plan: Inspector must cite §172.800(b).
 - 4.a.A 15-day letter will be sent to the motor carrier (see below).
 - 4.b.If the carrier does not rectify the problem within 15 days, an official Intent to Suspend or Revoke letter will be issued to the carrier.
5. Failure to comply with HMRs, FMCSRs, or compatible State regulations governing the transportation of HM.
 - 5.a.An Intent to Suspend or Revoke letter will be issued to the carrier.
6. Failure to comply with an OOS order: Inspector must cite §396.9, §385.13(c)(1), or §385.325(c).
 - 6.a.A 15-day letter will be sent to the motor carrier (see below).
 - 6.b.If the carrier does not rectify the problem within 15 days, an official Intent to Suspend or Revoke letter will be issued to the carrier.
7. Failure to comply with an order issued under HMR, FMCSRs, or compatible State regulation governing the transportation of HM.
 - 7.a.A 15-day letter will be sent to the motor carrier (see below).
 - 7.b.If the carrier does not rectify the problem within 15 days, an official Intent to Suspend or Revoke letter will be issued to the carrier.
8. Failure to maintain the minimum financial responsibility required by 49 CFR 387.9: Automatically checked by MCMIS.
 - 8.a.A 15-day letter will be sent to the motor carrier (see below).
 - 8.b.If the carrier does not rectify the problem within 15 days, an official Intent to Suspend or Revoke letter will be issued to the carrier.
9. Failure to maintain current HM registration with PHMSA: Automatically checked by MCMIS.
 - 9.a.A 15-day letter will be sent to the motor carrier (see below).
 - 9.b.If the carrier does not rectify the problem within 15 days, an official Intent to Suspend or Revoke letter will be issued to the carrier.
- 10.The motor carrier loses its operating rights or has its registration suspended for failure to pay a civil penalty or abide by a payment plan: Automatically checked by MCMIS.
 - 10.a.A Suspension or Revocation letter will be issued to the carrier.

Note: The 15-day letter will give the carrier 15 days to rectify the issue before it is brought before the Chief Safety Officer in an adjudications proceeding. Correction of items 1 and 9 will be verified through automated means. The correction of items 2, 4, and 6 will be verified

by Division Office.

If any actions listed in 49 CFR 385.421(a) are discovered on an HM motor carrier that had its safety permit previously suspended, it will have its HM safety permit, including Temporary HMSP, revoked for a period of 365 days from the time of the discovered action.

FMCSA will immediately suspend or revoke the HM motor carriers HMSP for the following reasons:

1. When it is discovered that an imminent hazard exists.
2. A final rating of less than Satisfactory is issued to the HM motor carrier.
3. The motor carrier loses its operating rights or has its registration suspended for failure to pay a civil penalty or abide by a payment plan.

Communication Program

What communication procedures must be in place for a carrier transporting a material that requires a HMSP?

The vehicle operator must make contact with the carrier at the beginning and end of each duty tour, and at the pick up and delivery of each load materials that require a HMSP. Contact can be made by telephone, radio or via electronic tracking or monitoring systems.

Can a GPS tracking system replace direct communication between the motor carrier operator and dispatcher?

Yes, as long as the tracking system creates a record of communication with the required information.

What documentation of the communication system is required to be maintained by the motor carrier?

The record must include:

1. The name of the driver
2. Identification of the vehicle
3. Permitted material(s) being transported
4. Date, location and time of each contact

The record of communications must be maintained by the carrier or driver for 6 months after the acceptance of the shipment. The communication records do not have to be maintained separately from other records currently maintained by the motor carrier as long as the information listed above is contained within the documents.

If one transport vehicle is delivering permitted material to more than one location during one duty period, when is communication required?

Communication is required at the pickup and delivery of each permitted load.

If a motor carrier is not required to file for a HMSP until October 2006 (for example), when do they need to have their communications plan in place?

The motor carrier will not be subject to the rule until they are required to file for their HMSP. Therefore, their communications plan must be in place by October 2006.

How does an owner/operator comply with the communication plan requirements?

The communications requirements may not apply to an owner/operator functioning under

their own authority if they have no supporting company infrastructure. If the only phone number for the company is the driver's cell phone, then the requirements of 385.415(a)(3) and/or 385.415(c)(1) do not apply.

Are team drivers required to contact the motor carrier each time they switch from sleeper berth to driving and back?

No, team drivers are not required to contact the motor carrier each time they switch drivers. The minimum number of contacts per day from team drivers to the motor carrier is two (2) per day with a maximum of fourteen (14) hours between each contact **and** at each pickup and delivery of a permitted load.

When is the vehicle required to be inspected prior to transportation?

Commercial motor vehicles transporting highway route controlled quantities (HRCQ) of radioactive materials (Class 7) are required to have a pre-trip inspection in accordance with the North American Standard Level VI inspection criteria.

When determining whether a shipment of explosives needs to be permitted or not, what quantity is used, gross weight or net explosive mass?

The permitting requirements are exhibited in gross weight of explosives in one transport vehicle.

Is there a Web site or telephone numbers for further information about the HMSP?

General HMSP information can be found at:

- <http://www.fmcsa.dot.gov/safety-security/hazmat/hm-permitting.htm>, or
- by calling 202-366-6121.

Part 385 - Investigative Procedures

Your investigation of Part 385 Subpart E should:

- Verify the motor carrier is subject to Part 385 Subpart E,
- Verify that the motor carrier holds a valid HMSP,
- Review compliance with Permitting rule including:
 - The motor carrier must have a security plan that is in accordance with Part 172 Subpart I
 - Minimum financial responsibility in accordance with Part 387
 - Motor carrier is registered to transport HM with the Pipeline and Hazardous Materials Safety Administration (§107.601)
 - The motor carrier has not falsified their MCS-150B (Permit application)
 - Communications plan in compliance with 385 Subpart E
 - If applicable, all HRCQ shipments have NAS Level VI inspections at point of origin.

Following this review, you should:

- Cite violations, and if warranted,
- Document counts for enforcement

Part 385 - CAPRI Procedures for Part 385

How should Part 385 Subpart E violations be cited in Subpart B?

Utilize the custom violations section of CAPRI.

Should the violation Operating without a HMSP be counted once per company or once per permitted trip?

The violation Operating without a HMSP shall be handled similarly to operating without a HM Registration. If a company is transporting permitted materials without a HMSP, every shipment is a violation, therefore numerous counts will be cited.

How do we enforce the Level VI inspections required of HRCQ loads?

If during a CR or roadside inspection, it is determined that a Level VI inspection did not occur prior to a shipment of a HRCQ load, the carrier should be cited in violation of §385.415(b)(1).

Can we utilize UFA for permitting violations?

Yes, any permitting violations found during a CR can be entered into UFA as a HM Other.

What are the Acute and Critical Regulations for Part 385?

There are **no** violation cites in Part 385 that have been designated as acute or critical regulations.

What violations types should be consider when enforcement action is contemplated?

Enforcement should be considered if one or more of the **Severe****** violations listed below are discovered.

Acute and Critical Regulations for Part 173		
Citation	Type	Description
385.403	Severe Level I	Transporting hazardous materials requiring a hazardous materials safety permit in commerce when the carrier does not hold a HMSP.
385.415(c)(1)	Severe Level II	Transporting a hazardous material requiring a safety permit and failing to follow the communication plan as required.
385.415(c)(1)	Severe Level II	Transporting a permitted material without maintaining a record of communication for six months as required.
390.35	Severe Level II	Making false entries on an MCS-150B.

Note: The hazardous materials regulations have extensive individualized requirements for some materials or groups of materials making a complete listing of violations for which enforcement should be considered difficult or impossible. If you discover a violation that is not on this list but believe it warrants enforcement, seek additional guidance from your supervisor or a hazardous materials specialist.

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1.4.11.10 Part 397 - Driving and Parking

[Investigative Procedures](#)
[CAPRI Procedures for Part 397](#)
[Enforcement Procedures](#)

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Critical and Acute Violations for Part 397

Citation	Type	Description
397.5(a)	Acute	Failing to ensure a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material is attended at all times by its driver or a qualified representative.

		Number checked is the number of instances checked for compliance with § 397.5(a).
397.7(a)(1)	Critical	Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway. Number checked is the number of instances checked for compliance with § 397.7(a)(1).
397.7(b)	Critical	Parking a motor vehicle containing hazardous material (s) other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street. Number checked is the number of instances checked for compliance with § 397.7(b).
397.13(a)	Critical	Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2. Number checked is the number of instances checked for compliance with § 397.13(a).
397.19(a)	Critical	Failing to furnish a driver of motor vehicle transporting Division 1.1, 1.2, or 1.3 (explosive) materials with a copy of the rules of part 397 and/or emergency response instructions. Number checked is the number of instances checked for compliance with § 397.19(a).
397.67(d)	Critical	Requiring or permitting the operation of a motor vehicle explosives in Division 1.1, 1.2, or 1.3 that is not accompanied by a written route plan. Number checked is the number of instances checked for compliance with § 397.67(d).

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1.4.11.11 Illustration HM-8 - Exhibit Abstract Part 107

EXHIBIT ABSTRACT

EXHIBIT NUMBER 1

INVESTIGATION NUMBER: WW-XX-YY-US0ZZZ

SECTION NUMBER: 107.608(b)

DESCRIPTION: Transporting a hazardous material without having registered with the Department under Subpart G of Part 107.
(This description of the violation must be the same wording that is used in Part B of the Compliance Review, in the Statement of Charges of the Notice of Claim and on the cover sheet of the Case Report)

REMARKS: (This description of the violation should contain all of the required elements of proof)

On July 7, 2001, ABC trucking used its driver, Bill Jones, to transport 27,216 kg (6,000 lbs.) of hazardous materials, Selenic acid, 8, UN1905, PG I, from Denver, CO to Kansas, City, MO, without first registering with the department as required under Subpart G of Part 107.

DOCUMENTS:

- Copy of oral interview with RSPA indicating there is no record of ABC trucking having registered with the department.
- Copy of shipping paper for Selenic acid, 8, UN1905, PG I indicating there was 27,216 kg (20,000 pounds) of product loaded by the shipper on ABC Trucking's trailer number 123 in Denver, CO, with a final destination of Kansas City, MO and signed by driver Bill Jones.
- Copy of the material safety data sheet provided by the shipper of the product indicating

- the DOT description as Selenic acid, 8, UN1905, PG I.
- Copy of the record of duty status for driver Bill Jones, dated from July 6, 2001 to July 8, 2001, indicating this driver drove tractor 49 and pulled trailer 123 from Denver, CO, to Kansas City, MO
 - Copy of signed statement of carrier official and Vice President of Safety, Bill Hickory dated July 31, 2001.

1.4.11.12 Illustration HM-9 - Exhibit Abstract Part 171

EXHIBIT ABSTRACT

EXHIBIT NUMBER 1

INVESTIGATION NUMBER: WW-XX-YY-US0ZZZ

SECTION NUMBER: 171.16(a)

DESCRIPTION: Failing to make a written report of an incident involving hazardous materials.

(This description of the violation must be the same wording that is used in Part B of the Compliance Review, in the Statement of Charges of the Notice of Claim and on the cover sheet of the Case Report)

REMARKS: (This description of the violation should contain all of the required elements of proof)

On July 7, 2001, ABC trucking used its driver, Bill Jones, to transport hazardous materials, Selenic acid, 8, UN1905, PG I, from Denver, CO to Kansas, City, MO During this trip, a hazardous materials incident occurred, and ABC trucking failed to prepare a written report of an incident involving hazardous materials as required.

During the trip four (4) drums of Selenic acid, 8, UN1905, PG I, overturned and began leaking which caused I-70 to be closed near mile marker 17, Goodland, Kansas, for three (3) hours in both directions. Investigation by the Kansas Highway Patrol indicated there was insufficient blocking and bracing on the last four (4) drums of the shipment that caused them to fall off the pallets and overturn. The contents of the drums began leaking from the closures because the closures were placed on the drums without gaskets.

DOCUMENTS:

1. Copy of shipping paper for Selenic acid, 8, UN1905, PG I indicating there was 20,000 pounds of product loaded by the shipper on ABC Trucking's trailer number 123 in Denver, CO with a final destination of Kansas City, MO and signed by driver Bill Jones.
2. Copy of the material safety data sheet provided by the shipper of the product indicating the DOT description as Selenic acid, 8, UN1905, PG I.
3. Copy of the record of duty status for driver Bill Jones, dated from July 6, 2001 to July 8, 2001, and indicating the driver drove tractor 49 and pulled trailer 123 from Denver, CO, to Kansas City, MO
4. Copy of Kansas Highway Patrol report number 1234567, dated July 7, 2001, indicating there was a leak of hazardous materials, that Interstate 70 was closed in both directions for three hours because of the leaking hazardous materials, and that the probable cause of the leak was improper blocking and bracing.

5. Copies of photographs taken by the Kansas Highway Patrol documenting the incident scene.
6. Copy of signed statement of carrier official and Vice President of Safety, Bill Hickory dated July 31, 2001.

1.4.11.13 Illustration HM-10 - RSPA's position

The following is a summary of RSPA's position on the use of the CDL and HM endorsements to satisfy the HM training requirements:

*“Compliance with the current requirements for a CDL with a tank vehicle or hazardous materials endorsement provides a driver with the general knowledge and skills necessary to operate a commercial motor vehicle with hazardous materials cargo and **may** satisfy the training requirements. As a HAZMAT employee, additional specialized training may be required based on the job function and material-specific requirements related to the handling of hazardous materials. **The HAZMAT employer must determine the extent to which the CDL endorsement satisfies all training requirements. (Note: CDL endorsement(s) may not fulfill the safety training requirement, also not all drivers transporting HM are required to get a CDL.** It remains the responsibility of the HAZMAT employer to ensure that their HAZMAT employees are properly trained for each HAZMAT function in accordance with the requirements of this final rule. The training requirements for HAZMAT employees who also drive commercial motor vehicles are supplemental to the licensing requirements of the CDL program. Accordingly, **RSPA is not providing a blanket exception from this final rule for a hazmat employee who operates a commercial motor vehicle, with a tank vehicle or hazardous materials endorsement on a CDL.**”*

The summary from the preamble of the final rule places the requirement on the HAZMAT employer to insure that the training needs of its HAZMAT employees are met. The CDL does not automatically cover all training requirements. When conducting a compliance review of a motor carrier, the following issues should be considered to determine compliance with the HM training requirements:

- Has the HAZMAT employer provided the required HAZMAT employee training?
- Are the HM training materials complete and available for review?
- Are HAZMAT employee training certifications maintained and available for review?
- Interviews with HAZMAT employees are a good source of information in determining if the employee has received the required training.
- Frequency of renewal of the CDL. Recurrent training is required **every three years**. If a CDL endorsement is valid for more than three years, then the CDL endorsement does not satisfy the **recurrent training** requirement. It is important to check the State's CDL endorsement renewal process, as well. CDL endorsement renewal may involve the payment of a fee only and, therefore, would not meet the recurrent training requirements.

Failing to properly train HAZMAT employees is serious. Any violation of the HM training requirements should be noted on Part B of the compliance review and appropriate enforcement should be taken, when deemed appropriate.

1.4.11.14 Illustration HM-11 - Exhibit Abstract Part 172**EXHIBIT ABSTRACT****EXHIBIT NUMBER** 1**INVESTIGATION NUMBER:** WW-XX-YY-US0ZZZ**SECTION NUMBER:** 172.704(a)(2)**DESCRIPTION:** **Failing to provide hazardous materials employee with function specific training.**

(This description of the violation must be the same wording that is used in Part B of the Compliance Review, in the Statement of Charges of the Notice of Claim and on the cover sheet of the Case Report)

REMARKS: (This description of the violation should contain all of the required elements of proof).

On July 5, 2001, Bogle Chemical Company used its hazardous materials employee, Joe Bogle, to fill twenty (20) drums with Selenic acid, 8, UN1905, PG I. This shipment had a final destination of Kansas, City, MO. Bogle Chemical Company failed to provide its hazardous materials employee with function-specific training as required.

During the trip four (4) drums of Selenic acid, 8, UN1905, PG I, overturned and began leaking which caused I-70 to be closed near mile marker 17, Goodland, Kansas, for three (3) hours in both directions. The investigation by the Kansas Highway Patrol indicated there was insufficient blocking and bracing on the last four (4) drums of the shipment that caused them to fall off the pallets and overturn. The contents of the drums began leaking from the closures because the closures were placed on the drums without gaskets.

An interview with Joe Bogle, the person who physically performed the closure process for the twenty (20) drums involved in this shipment revealed that he had not been provided training on the proper procedures to follow when closing a drum. That interview also revealed that Mr. Bogle and was both unaware of the written closure instructions which were provided by the manufacture of the package and unable to produce a copy of the closure instructions. In a subsequent interview with the President, Don Bogle discovered that the company had no training program to address filling and closing of drums.

A discussion with officials at Russell-Stanley Corporation, the manufacturer and provider of the specification drums to Bogle Chemical Company, determined the closure instructions were provided. A written record of these events was maintained by Russell-Stanley Corporation.

DOCUMENTS:

1. Copy of shipping paper for Selenic acid, 8, UN1905, PG I indicating there was 9,072 kg (20,000 pounds) of product loaded by the shipper on ABC Trucking's trailer number 123 in Denver, CO, with a final destination of Kansas City, MO and signed by driver Bill Jones.
2. Copy of the material safety data sheet provided by the shipper of the product indicating the DOT description as Selenic acid, 8, UN1905, PG I.
3. Copy of Kansas Highway Patrol report number 1234567, dated July 7, 2001, indicating there was a leak of hazardous materials, that Interstate 70 was closed in both directions

for three hours because of the leaking hazardous materials and that the probable cause of the leak was improper blocking and bracing.

4. Copies of photographs taken by the Kansas Highway Patrol documenting the incident scene.
5. Copy of signed statement of Joe Bogle, hazardous materials employee with Bogle Chemical Company, dated August 15, 2001.
6. Copy of signed statement of Don Bogle, President of Bogle Chemical Company, dated August 15, 2001.
7. Copy of signed statement of official from the Russell-Stanley Corporation, dated August 9, 2001.

1.4.11.15 Illustration HM-12 - Exhibit Abstract Part 173

EXHIBIT ABSTRACT

EXHIBIT NUMBER 1

INVESTIGATION NUMBER: WW-XX-YY-US0ZZZ

SECTION NUMBER: 173.24(b)(1)

DESCRIPTION: **Transporting a hazardous material in a packaging that has an identifiable release of hazardous materials to the environment.**

(This description of the violation must be the same wording that is used in Part B of the Compliance Review, in the Statement of Charges of the Notice of Claim and on the cover sheet of the Case Report).

REMARKS: (This description of the violation should contain all of the required elements of proof).

On July 7, 2001, ABC trucking used its driver, Bill Jones, to transport hazardous materials, Selenic acid, 8, UN1905, PG I, from Denver, CO to Kansas, City, MO in company vehicle #301. The drums had an identifiable release of hazardous materials to the environment. Vehicle # 301 was inspected at the Goodland, Kansas inspection area (Mile marker 17 on I-70 eastbound). During this inspection the Kansas Highway Patrol discovered that the bungs for four drums of Selenic acid, 8, UN1905, PG I were leaking and had spilled approximately 94 liters (25 gallons) of hazardous material inside the trailer.

DOCUMENTS:

1. Copy of shipping paper for Selenic acid, 8, UN1905, PG I indicating there was 9,072 kg (20,000 pounds) of product loaded by the shipper on ABC Trucking's trailer number 123 in Denver, CO with a final destination of Kansas City, MO, and signed by driver Bill Jones.
2. Copy of the material safety data sheet provided by the shipper of the product indicating the DOT description as Selenic acid, 8, UN1905, PG I.
3. Copy of the record of duty status for driver Bill Jones dated from July 6, 2001 to July 8, 2001, indicating this driver drove tractor 49 and pulled trailer 123 from Denver, CO, to Kansas City, MO
4. Copy of Kansas Highway Patrol report number 1234567, dated July 7, 2001, indicating

- there was a leak of hazardous materials.
5. Copies of photographs taken by the Kansas Highway Patrol documenting the incident scene.
 6. Copy of signed statement of carrier official and Vice President of Safety, Bill Hickory, dated July 31, 2001.

1.4.11.16 Illustration HM-13 - Exhibit Abstract Part 177

EXHIBIT ABSTRACT

EXHIBIT NUMBER 1

INVESTIGATION NUMBER: WW-XX-YY-US0ZZZ

SECTION NUMBER: 177.817(a)

DESCRIPTION: **Transporting a shipment of hazardous material that is not accompanied by a properly prepared shipping paper**
(This description of the violation must be the same wording that is used in Part B of the Compliance Review, in the Statement of Charges of the Notice of Claim and on the cover sheet of the Case Report).

REMARKS: *(This description of the violation should contain all of the required elements of proof.)*

On July 5, 2001, ABC Trucking used its driver, Joe Bogle, to operate a commercial motor vehicle to transport (20) drums containing Selenic acid, 8, UN1905, PG I from Denver, CO to Kansas, City, MO. ABC Trucking failed to have a properly prepared shipping paper accompany the shipment.

The shipping paper that accompanied the shipment failed to show the hazard class, identification number and packaging group.

DOCUMENTS:

1. Copy of shipping paper for Selenic acid, 8, UN1905, PG I indicating there was 20 drums of product loaded by the shipper on ABC Trucking's trailer number 123 in Denver, CO, with a final destination of Kansas City, MO, and signed by driver Bill Jones.
2. Copy of the material safety data sheet provided by the shipper of the product indicating the DOT description as Selenic acid, 8, UN1905, PG I.
3. Copies of photographs taken by the Kansas Highway Patrol documenting the incident scene.
4. Copy of signed statement of Bill Hickory, Safety Director for ABC Trucking Company, dated August 15, 2001.

1.4.11.17 Illustration HM-14 - Exhibit Abstract Part 180

EXHIBIT ABSTRACT

EXHIBIT NUMBER 1

INVESTIGATION NUMBER: WW-XX-YY-US0ZZZ

SECTION NUMBER: 180.407(a)(1)

DESCRIPTION: Transporting a shipment of hazardous materials in a cargo tank that has not been inspected and tested in accordance with § 180.407.

(This description of the violation must be the same wording that is used in Part B of the Compliance Review, in the Statement of Charges of the Notice of Claim and on the cover sheet of the Case Report).

REMARKS: *(This description of the violation should contain all of the required elements of proof.)*

On July 25, 2001, ABC Trucking used its driver, Joe Bogle, to operate a commercial motor vehicle to transport Gasoline, 3, UN1203, PG II from Denver, CO, to Kansas City, MO, in a specification 406 cargo tank. The tank had not been inspected and tested in accordance with § 180.407.

The cargo tank was last visually inspected in May of 2000 and was required to be retested no later than May 31, 2001. A review of the last test and inspection of the cargo tank indicated the visual and leak tests were last performed on May 13, 2000. The carrier provided no evidence to indicate the required tests and inspections had been performed.

DOCUMENTS:

1. Copy of shipping paper for Gasoline, 3, UN1203, PG II.
2. Copy of the material safety data sheet provided by the shipper of the product indicating the DOT description as Gasoline, 3, UN1203, PG II.
3. Copies of photographs documenting the markings on the side of the tank indicating the tank was last visually inspected during the month of May 2000 and of the specification plate indicating this cargo tank is a specification tank.
4. Copy of the last test and inspection report indicating the inspection was performed on May 13, 2000.
5. Copy of the certificate of compliance for the cargo tank.
6. Copy of signed statement of Bill Hickory, Safety Director for ABC Trucking Company, dated August 15, 2001.

1.4.11.18 Illustration HM-15 - Exhibit Abstract Part 397

EXHIBIT ABSTRACT

EXHIBIT NUMBER 1

INVESTIGATION NUMBER: WW-XX-YY-US0ZZZ

SECTION NUMBER: 397.7(b)

DESCRIPTION: Parking a motor vehicle containing hazardous material(s) within 5 feet of a traveled portion of highway or street.

(This description of the violation must be the same wording that is used in Part B of the Compliance

Review, in the Statement of Charges of the Notice of Claim and on the cover sheet of the Case Report).

REMARKS: (This description of the violation should contain all of the required elements of proof).

On or about August 5, 2001, Pet Transport required driver Bill Jones to park a cargo tank containing 34,069 liters (9,000 gallons) of Gasoline, 3, UN1203, PG II in a location that was within five (5) feet of the traveled portion of the highway or street.

At 9:30 AM on August 5, 2001, Officer Bill Smith and Special Agent Adam observed unit 42 and trailer 104 traveling north on Old Mount Holly Road, in Charlotte, North Carolina. This unit was observed pulling off onto the shoulder of the roadway and parking. Driver Jones walked across the street to a house that had been converted to an office. Approximately 30 minutes later, the driver returned to the unit.

A discussion with the driver ensued, and it was determined that drivers are instructed by Pet Transport to park in this location in order to turn in their bills to the dispatcher who is located in the "office". The company provides no other space for the tractor/trailer combination to park.

DOCUMENTS:

1. Copy of shipping paper for Gasoline, 3, UN 1203, PG II indicating there was 34,069 (9,000 gallons) of product.
2. Copy of the material safety data sheet provided by the shipper of the product indicating the DOT description as Gasoline, 3, UN 1203, PG II.
3. Copies of photographs documenting the location of vehicle parked on the side of the road and the distance to the traveled portion of the roadway.
4. Copy of signed statement of Gary Motley, dispatcher for Pet Transport, dated August 5, 2001.
5. Copy of driver Bill Jones' August 5, 2001 statement.

1.4.12 Cargo Tank Test and Inspection Facility Compliance Reviews

[General Procedures](#)

[Cargo Tank Facility Reviews - Investigative Procedures](#)

[Investigative Procedures Assembly, Repair and Manufacturing Facilities](#)

[Cargo Tank Facility Reviews CAPRI Procedures](#)

[Cargo Tank Facility Reviews - Enforcement Procedures](#)

[Procedures for Re-testing Cargo Tanks](#)

[Suggested Recommendations for Cargo Tank Facilities](#)

[Information Collection for Structural Analysis](#)

[Illustration HM-16 Exhibit Extract for Part 107](#)

[Illustration HM-17 Exhibit Extract for Part 180](#)

[Illustration HM -18 Sample Letter to Solicit Comments on Engineering Analysis](#)

1.4.12.1 General Procedures

[What is a cargo tank test and inspection facility compliance review CTFR?](#)

[Who is subject to a CTFR?](#)

[When should I initiate a CTFR?](#)

[What should I do if a motor carrier is also found to be a registered cargo tank facility?](#)

[What should I do during a compliance review of a cargo tank facility when I have discovered the entity is also performing the functions of a motor carrier or shipper?](#)

[Who should conduct CTFRs?](#)

[Will a CTFR be rated?](#)

[What are the policies and procedures for handling complaints on cargo tank testing, inspection, repair and assembly facilities?](#)

[What are the policies and procedures for handling complaints on cargo tank manufacturers or other facilities where engineering analysis is required?](#)

[What are the policies and procedures when conducting a review of a cargo tank facility located in Canada or Mexico?](#)

What is a cargo tank test and inspection facility compliance review CTFR?

A cargo tank facility review (CTFR) is an in depth review of facilities that are engaged in the manufacture, assembly, inspection and testing, certification, or repair of a cargo tank or a cargo tank motor vehicle manufactured in accordance with a DOT specification or under the terms of a special permit to evaluate the facility's compliance with the applicable Hazardous Materials Regulations (HMR).

The report form is designed to provide the Federal Motor Carrier Safety Administration with statistical information that will be used to determine the level of compliance. A focus sample

of facility records and practices should be reviewed prior to making recommendations and technical assistance to the facility as well as administrative action, which may include civil penalties, requiring corrective actions through use of a Notice of Investigation and a Proposed Compliance Order, Consent Agreement, or actions taken through a U.S. District Court.

Who is subject to a CTFR?

All persons who perform manufacture, assembly, inspection and testing, certification, or repair of a cargo tank or a cargo tank motor vehicle governed by 49 CFR Part 100-185 of the HMR are subject to a CTFR and the compliance review procedures set forth in this Chapter should be followed.

When should I initiate a CTFR?

Cargo tank facilities should be chosen for review based on known violations of acute/critical/serious regulations discovered during reviews of a cargo tank motor carrier, shipper, or facility operation; prior compliance/enforcement history including complaints and roadside inspections; or lack of compliance history(no prior review). Priority of compliance reviews on manufacturers is determined annually by the HM Division in Headquarters. Please note that Cargo Tank Facilities are not incorporated into the SafeStat algorithm.

What should I do if a motor carrier is also found to be a registered cargo tank facility?

1. Conduct a CTFR in addition to a motor carrier review whenever you discover that a cargo tank motor carrier is found to be performing tests, inspections, repairs, or any other function covered by 49 CFR, Part 180 which would require the facility to register under with the Department in accordance with 49 CFR, Part 107, Subpart F.
2. Identify what cargo tank facility functions the carrier performs and follow the guidance found in Who should conduct CTFRs?

What should I do during a compliance review of a cargo tank facility when I have discovered the entity is also performing the functions of a motor carrier or shipper?

A full compliance review of the carrier and/or shipper operations should be initiated when any of the following conditions exist:

1. There are indications of substantial noncompliance with the FMCSRs or HMRs, or;
2. The carrier has a rating factor less than satisfactory and has not been reviewed in the past 12 months, or;
3. The carrier/shipper has never been reviewed.

Who should conduct CTFRs?

Due to the specialized and technical nature of cargo tank facility reviews, they will be conducted in accordance with the following procedures:

1. Reviews of a cargo tank manufacturer facility will be conducted by Cargo Tank TAG members and/or safety specialists with equivalent training and experience. Manufacture reviews will include assistance from an engineer.
2. Reviews of facilities that repair or assemble cargo tanks will be conducted by Cargo Tank TAG members, an HM Specialist, or safety specialist with equivalent training and experience. Assistance from an engineer should be requested if the facility is rechassing cargo tanks and accident damage protection devices and/or attachments are modified from the original design.
3. Reviews of a cargo tank test and inspection facility may be conducted by state or

federal field safety specialists who have successfully completed both the Cargo Tank / Bulk package Course and the Cargo Tank Test and Inspection Facility Course and/or demonstrated experience in conducting test and inspection facility reviews.

■ ***Will a CTFR be rated?***

No, there is no current rating methodology to rate a CTFR

■ ***What are the policies and procedures for handling complaints on cargo tank testing, inspection, repair and assembly facilities?***

Complaints against cargo tank facilities should be handled in accordance with the general complaint procedures

■ ***What are the policies and procedures for handling complaints on cargo tank manufacturers or other facilities where engineering analysis is required?***

Complaints against cargo tank facilities should be handled in accordance with the general complaint procedures. To ensure these complaints are properly addressed, the supporting documents should include pictures of the violation and/or sufficient information which may include engineering calculations to support the complainants allegations. If the written complaint fails to provide sufficient information, the complainant should be advised what additional information is necessary to warrant an investigation. Examples of complaints that could be received regarding a cargo tank manufacturer include:

1. The rear-end protection device of a cargo tank does not meet the dimensional requirements.
2. The cargo tank is not certified when it is required to be manufactured to the ASME Code. An example would be an ASME name plate without the "U" stamp and cloverleaf code symbol stamped on the name plate which certifies the tank is an ASME code vessel.
3. A specification plate lacks all of the required information.
4. If an alleged violation is a design defect that would be verified by engineering calculations (e.g. the overturn protection device of a cargo tank is not strong enough), sufficient design information to conduct a preliminary structural analysis must be provided for the complaint to be investigated. This information must include dimensions (size, thickness, etc.), type of material (mild steel, stainless steel, aluminum, etc.), and required loadings (maximum weight of lading, GVWR of vehicle, etc.) A picture of an alleged violation of this type is not sufficient for the complaint to be investigated.

If an alleged violation would be verified through testing, testing documentation that verifies the violation must be provided for the complaint to be investigated. Regardless of the type of violation, documentation connecting an alleged violation to a hazardous material spill is sufficient information for the complaint to be investigated.

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What are the policies and procedures when conducting a review of a cargo tank facility located in Canada or Mexico?

Although FMCSA has the authority to conduct compliance reviews of cargo tank facilities that are based in Canada, FMCSA has no jurisdiction to enforce those rules for a cargo tank that does not operate in the U.S.

These violations may not be used to bring an enforcement action therefore they should not be noted on the Part B of the compliance review report but they should be noted in the recommendations. If the cargo tank is a DOT specification cargo tank, and enters the US at anytime however, it must be fully compliant with the Federal Hazardous Materials regulation.

Violations that relate to tanks that do not enter the United States should be referred to the HM Division in HQ for referral to the competent authority in the jurisdiction and noted in the Part C of the compliance review report.

1.4.12.2 Cargo Tank Facility Reviews - Investigative Procedures General

[What procedures should I follow when reviewing cargo tank facilities?](#)

[What procedures should I follow when conducting an opening interview?](#)

[What should I look for when inspecting the shop area for testing equipment?](#)

[What procedures should I follow when conducting interviews of registered inspectors?](#)

[What should I look for when conducting walk-around inspections of cargo tanks?](#)

[How do I review cargo tank test and inspection records?](#)

[How do I review hazmat employee training records?](#)

[What is the sampling methodology for walk-around inspections?](#)

[What should I do when I cannot inspect the minimum number of cargo tanks because the facility does not have any cargo tanks available?](#)

[What is the priority for the selection of cargo tanks for walk-around inspections?](#)

[When should the sample be expanded?](#)

[How should interviews be utilized during the CTR?](#)

[What are some techniques for interviewing the person responsible for compliance?](#)

[What are some techniques for interviewing the inspectors & testers?](#)

[What do I do if I find the facility is not registered and/or hasn't updated its registration statement with FMCSA?](#)

[What are the procedures for concluding a cargo tank facility review?](#)

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What is the sampling methodology for walk-around inspections?

Number of cargo tanks tested per year	Number of cargo tanks to be inspected
1-5	ALL
6-25	8
26-50	13
91-150	20
151-280	32
281-400	50
401-500	68
Over 500	80

Note: Unless full Level I or Level V inspections are conducted, these inspections will not be used to verify compliance with Parts 393 and 396 of the regulations or to determine the OOS rate.

What should I do when I cannot inspect the minimum number of cargo tanks because the facility does not have any cargo tanks available?

You should identify customers, within a 50 air mile radius of the facility location, if possible, where the facility has performed tests and inspections on their customers cargo tanks. Call the motor carriers and request them to fax you copies of the test and inspection reports and the associated work orders describing the work performed and the parts used to make the repairs. Based on the review of these records it may be necessary for you to make appointments with these motor carriers to perform inspections of these cargo tanks to verify repairs. If the minimum number of cargo tanks cannot be inspected the reason should be explained in Part C.

What is the priority for the selection of cargo tanks for walk around inspection?

1. Select tanks for which inspection/test report verification and walk-around inspections will be conducted from any known or alleged violations or cargo tanks involved in crashes.
2. Select tanks for the most recent tests/inspections completed.
3. If no cargo tanks are available; arrange to inspect cargo tanks at the nearest motor carrier to validate performance of tests/inspections with completed reports.

Note: If possible, tanks should be select for inspections which have defects noted on the reports as well as those with no defects noted.

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What do I do if I find the facility is not registered and /or has not updated its registration statement with FMCSA?

The field staff shall require the facility to update their Cargo Tank facility Registration as soon as it is discovered that a facility is performing functions where registration is required or update their registration statement to reflect current operations. This should be done, on-line at the time of the review.

What are the procedures for concluding a cargo tank facility review?

1. The closeout session should be conducted as described in the closeout procedures. See [Conclusion of Investigation and Completion of Part C](#).

2. The investigator will keep a record of the tanks and dates for each violation counted. Information on individual violations will be presented at the facility's request.
3. Recommendations and technical assistance to assist the facility in gaining compliance should be provided during the closeout session.
4. Additional information not specifically addressed in Part A and/or Part B should be entered in the remarks section of Part C

1.4.12.3 Investigative Procedures Assembly, Repair and Manufacturing Facilities

[What are the review procedures for conducting a CR on an assembly repair and manufacture facilities?](#)

[What activities should be undertaken prior to the initiation of the review?](#)

[What procedures should be followed when an engineering analysis of a cargo tank design is to be performed?](#)

[When should FMCSA conduct Finite Element Analysis to determine compliance?](#)

[What is the FMCSA enforcement policy for violations discovered during a cargo tank assembler, repair or manufacturer review?](#)

[When will enforcement action not be taken on a cargo tank manufacturer review?](#)

[What procedures should be followed by an investigator on a cargo tank manufacturer review?](#)

[What is the selection priority for cargo tank designs to review?](#)

[What should be included in the engineering report?](#)

[What are the procedures for concluding a cargo tank assembly, repair or manufacturing review when engineering analysis is required?](#)

What are the review procedures for conducting a CR on an assembly repair and manufacture facilities?

In addition to the procedures described in the General Investigative Procedures section, the following are the procedures for conducting a review on cargo tank assembly repair and/or manufacture facility.

1. 1. Engineering assistance is available and will be required for all compliance reviews under the following conditions:
 - 1.a. When engineering analysis is required to verify a design requirement; or
 - 1.b. When a Design Certifying Engineer (DCE) certifies all or part of the design including rear end protection devices, piping protection, overturn protection, attachment of the tank to the chassis; or
 - 1.c. When facilities are performing stretching, modification or re-barreling of tanks. Procedures for performing engineering analysis are explained in **<insert link to what procedures should be followed when an engineering analysis of a cargo tank design is to be performed>**.
2. Engineering assistance may not be required for a manufacturer or assembly facility where engineering analysis of its designs has been performed by FMCSA within the past 2 years and no significant changes in the design have been made since the analysis.
3. If a manufacturer review is planned or engineering support is necessary for an assembly or repair facility review, Guidelines for Structural Analysis of Cargo Tanks

provides information and procedures to assist the Safety Investigator and the engineer. It is important to meet with the engineer and review this information in order to achieve a better understanding of the operation of the facility.

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1.4.12.4 Cargo Tank Facility Reviews - CAPRI Procedures

[Are there differences in entering information in CAPRI for a cargo tank facility review verses a regular motor carrier?](#)

[What do I enter in Part A as a DOT Number?](#)

[Under the Operations Type block, what should I enter?](#)

[How do I fill out the Part A Address Tab?](#)

[What should I mark under the Miscellaneous Tab?](#)

[There is an additional Tab on these types of reviews. Where do I start after I complete Part A?](#)

[Under the CTFR General Tab what information needs to entered?](#)

[What information needs to be entered in the Personnel Tab?](#)

[What should I enter in the Inspections and Testing Part1 Tab?](#)

[What do I enter in the Inspection/Testing Part 2Tab?](#)

[What needs to be entered in the Repairs Tab?](#)

[What should be entered into the Manufacturing /Assembly Tab Part 1?](#)

[How do I record violations against a cargo tank facility?](#)

[Suggested Recommendations for Cargo Tank Facilities](#)

Are there differences in entering information in CAPRI for a cargo tank facility review verses a regular motor carrier?

Yes. There are some differences but in general the information requested is self explanatory. In addition, you can always select help from the help menu to get additional information. We will identify some of the differences here to assist you in entering the information.

Note: If you downloaded the cargo tank profile from MCMIS prior to the review then you will already have most of this information.

What do I enter in Part A as a DOT Number?

All facilities or their parent companies should have a US DOT number. Each facility will be assigned a separate CT number if more than one facility is owned by the company. Enter the DOT number as you would with any review (or download from MCMIS), then enter the CT number in the block that is available for the facility you are reviewing. This number will need to be re-entered when you enter the CTFR tab.

Under the Operations Type block, what should I enter?

This is basically the same as any other review, with the exception that it may be a CT only review. If the CT Facility is also a motor carrier you will need to select either an HM carrier, or HM carrier/shipper AND the CT operations under carrier/shipper operation type block. This function allows all HM functions and CT operations to be selected, or just the CT operations.

How do I fill out the Part A Address Tab?

The address tab under part A gives you options for both physical and mailing addresses for both the Corporation and the facility address. There are two different physical addresses shown on the General page. The first physical address is for the Corporation Main office, along with the Mailing address for the Corporation. These could all be the same, or in some instances be totally different. The second physical address and mailing address are for the address of the registered facility (CT number) location that you are reviewing.

What should I mark under the Miscellaneous Tab?

If this is the company's only location, you should show principle place of business if this is one of several locations for this company then select terminal or division.

There is an additional Tab on these types of reviews. Where do I start after I complete Part A?

Enter the CTFR Tab:

1. You will first enter the start tab located at the top of the page.
2. You will again be asked to enter the CT number and the effective date. This would be the date of the latest update or renewal of their CT registration. You may obtain this from a copy of their letter, or from information obtained from MCMIS.
3. R stamp and U stamp numbers along with the expiration dates should be entered if applicable. The expiration dates are indicated on the certificates issued by the competent authority.
4. Under cargo tank facility type indicate each function the facility actually performs and indicate size based on the following guidelines:

Size	Number of Cargo Tanks Tested Annually
Small	1-20
Medium	21-100
Large	Over 100

5. As an example, if the facility performs tests and inspections on 39 cargo tanks per year they would be considered medium but if they also manufactured 10 cargo tanks per year they would be classified as small for that function. If the company uses the

services of a DCE but the DCE is not an employee of the company, this entry should still be marked as small, medium, large. DCE Information will be entered later on in the personnel tab.

6. Indicate any components the facility might manufacture. (Note: Component manufactures are required to register with the Department)

Under the CTFR General Tab what information needs to be entered?

1. Generally, engineering information will only be entered during a manufacturer review; when a repair facility has performed modifications or stretching or an assembler has attached accident damage protection devices or modified the method or means of attachment of the cargo tank to the chassis. (Refer to: Who should conduct a CTFR?)
2. The engineering start date will be the date the engineer actually received the engineering design and calculations from the manufacturer or the investigator.
3. The date verified will be the date of the peer review by another engineer within the cargo tank program.
4. Inspections, test or repairs at remote locations refer to mobile facilities (those locations where tests or inspections are performed and those locations are not identified on the registration statement). Also, if repairs requiring an R stamp are performed at locations other than the address of the repair facility where the R stamp is issued, the R stamp authorization will indicate that off site repairs using this R stamp are authorized but the off site location must follow the quality control procedures of the location identified in the R stamp application and the documents support these off-site repairs must be maintained at the main location. Note that off-site repairs do not apply to a fixed location. A separate "R" stamp must be issued for each fixed facility location.
5. Registration information can be verified either by letter or on-line. If they updated their information on line, there will be a record available showing the date and who updated the information in addition to a letter being generated and sent to the facility acknowledging the action. It is a good practice to try to review the original letter submitted to verify the functions they have stated they wish to perform. Updated or renewal letters will not necessarily address those functions.

What information needs to be entered in the Personnel Tab?

1. Under the personnel tab you have selections for registered inspectors, authorized inspectors, engineers and other personnel. Note, not all of these tabs will be available depending on the functions selected.
2. Under the registered inspector tab, an entry should be made using the add icon for each individual that performs some function in the testing, inspecting, repair, stretching/modification/rebarreling, manufacturing, or wet magnetic particle test. The process will ask you if they are qualified. Do not answer this until you have determined if they are in fact qualified.
3. Under the Authorized Inspector tab, the name of the individual, and the organization that individual works for (i.e.: Hartford Boiler, etc) should be entered. This would be entered if this company uses as an authorized inspector (i.e.: an R stamp or U stamp facility).
4. When entering information in the engineering tab, the DCE selection must be made under the General tab. Otherwise it will not allow you to make an entry. If the company uses a DCE the information can be entered using the add icon and filling in the information including the information concerning a DCE who has his/her own CT number. There is a check block for a DCE that is in-house so that duplicate information is not required.

What should I enter in the Inspections/ Testing Part 1 Tab?

1. You will need to first establish what types of inspections this company performs. This can be accomplished by using one of the following methods:
 - 1.1. Reviewing their letter of registration;
 - 1.2. Reviewing their inspection reports/worksheets;
 - 1.3. By oral interview.
2. Once this has been established, you can enter the registered and performed check blocks accordingly. You will need to observe their actual operation or their equipment room to answer the blocks for equipment. A hint list will appear as you scroll through the selections. These hints are not all inclusive, but designed as an aid to assist you during this entry.
3. 2. At the bottom of this page there is a content of violations block. This should only have entries after you have reviewed their inspection reports, reviewed the files on the qualifications of the inspector/testers, work orders, and inspected tanks that are present or at carriers locations.
4. 3. The inspection reports block is basically the same as the normal work sheet for other types of reviews. Just enter the number of reports checked and the number of violations discovered.

What do I enter in the Inspection/Testing Tab Part 2?

In this tab, you will enter the exact type of tests that this facility actually performs. Some companies will register to do several different types of tests or inspections, but actually only perform one or two. In this tab, you will check each applicable button near the top under Inspection Type. If the company does not perform the function, just leave it blank. If you make a mistake, just click it again and it will remove the selection. Inspection and testing tab 2 should correspond with your selections in inspection and testing Tab 1 as to those performed by the company. If you failed to check the performed block in Tab 1 the section in Tab 2 will be grayed out and not allow an entry.

What needs to be entered in the Repairs Tab?

Note: Refer to the Agency policy concerning <enter link for who should perform these types of reviews.>

1. If this is a facility holding an R or a U stamp that performs repairs, the appropriate information should be entered in the selections that appear. Remember the top block should be marked yes if any welding is performed (for repair purposes) on the cargo tank wall.
2. Quality Control procedures will be marked after determining the answers to the requested questions. Procedure books, welding procedures, coupons, and lab tests will need to be reviewed in order to complete this section.
3. Appropriate Tests Performed block can only be answered after reviewing the paperwork present, by observing the actual test, or inspecting the tank after it has been inspected.

What should be entered into the Manufacturing /Assembly Tab Part 1?

The Engineering section would be for any review where engineering analysis was performed and the information requested would be obtained from the manufacturer concerning which type of tanks, which design he is now using, and specific information about those designs. This Tab allows for multiple entries for companies that manufacturer different types of tanks and different types of designs (i.e.; elliptic, round, self supporting, conical, double conical,

etc.) even though these may be all the same type of specification.

How do I record violations against a cargo tank facility?

Definitions:

1. Acute regulations are those regulations within the FMCSRs and HMRs that are severe and, if discovered, demand immediate corrective action by the facility. If the facility is also a motor carrier these violations will also affect their safety rating.
2. Critical regulations are those regulations within the FMCSRs and HMRs that indicate breakdowns in the management and/or operational controls of the facility. If the facility is also a motor carrier, these violations will also affect their safety rating.
3. Severe regulations demand immediate corrective action by the violator. Enforcement action is taken when a violation of the following regulations is discovered unless there are strong mitigating circumstances.

Critical and Severe Citations

Citation	Type	Description
107.502(b)	Severe Level II	Manufacturing, assembling, certifying, inspecting, or repairing) a cargo tank or cargo tank motor vehicle manufactured to a DOT specification, without registering.
107.504(c)	Severe Level I	Failing to renew registration every six years, or within 30 days of renewal of an ASME or National Board Certification.
180.3(a)	Severe Level I	(Representing, marking, certifying, selling or offering) a package or container as meeting (a requirement of 49 CFR Part 180 or a DOT exemption issued under 49 CFR part 107), when it was not (marked, maintained, reconditioned, repaired, or retested) in accordance with Part 180.
180.405(b)	Severe Level I	Marking or certifying a cargo tank to a specification no longer authorized. Note: For marking or certification of 306, 307, and 312 series cargo tanks after 08/31/95.
180.405(g)	Severe Level I	Failing to equip a cargo tank with manhole assemblies conforming to § 178.345-5. Note: Ensure the assembly does not meet an exception.
180.405(h)	Severe Level II	Failing to replace a reclosing pressure relief valve with a valve meeting the requirements of § 178.345-10. Note: Only applicable when valve is being replaced. There is no retrofit requirement.
180.407(a)	Critical	Using a specification cargo tank that has not been inspected or retested in accordance with § 180.407. Number checked is the number of instances checked for compliance with § 180.407(a).

180.407(a)(2)	Severe Level I	Subjecting a cargo tank to a pressure greater than its design pressure or maximum allowable working pressure (MAWP). Note: Except during a pressure test, loading, or unloading.
180.407(a)(3)	Severe Level I	Performing or witnessing a test or inspection on a cargo tank without meeting the minimum qualifications prescribed in § 180.409.
180.407(b)(1)	Severe Level I	Failing to test and inspect a cargo tank that shows evidence of bad dents, corroded or abraded areas, leakage, or any other condition that might render it unsafe for transportation.
180.407(b)(2)	Severe Level I	Failing to test and inspect a cargo tank that has been in an accident and has been damaged to an extent that may adversely affect its lading retention capability.
180.407(b)(3)	Severe Level I	Failing to conduct a pressure test in accordance with § 180.407(g) on a cargo tank which has been put out of hazardous materials transportation service for a period of one year or more.
180.407(b)(4)	Severe Level I	Failing to test and inspect a cargo tank that has been modified from its original design specification.
180.407(b)(5)	Severe Level I	Failing to conduct a test or inspection on a cargo tank when required by the Department of Transportation.
180.407(c)	Critical	Failing to periodically test and inspect a cargo tank. Number checked is the number of cargo tanks checked for compliance with periodic test and inspection requirements.
180.407(d)	Severe Level I	Failing to perform an external visual inspection as prescribed.
180.407(e)	Severe Level I	Failing to perform an internal visual inspection as prescribed.
180.407(f)	Severe Level I	Failing to perform a lining inspection as prescribed.
180.407(g)	Severe Level I	Failing to perform a pressure retest as prescribed.
180.407(g)(3)	Severe Level I	Failing to perform a wet fluorescent magnetic particle test on an MC _{330/331} cargo tank.
180.407(h)	Severe Level I	Failing to perform a leakage test as prescribed.
180.407(i)	Severe Level I	Failing to perform a thickness test as prescribed.
180.413(a)(1)(i)	Severe Level I	Performing a repair of a non-ASME Code stamped cargo tank while failing to hold a valid ASME Certificate of Authorization for the use of the "U"

		stamp or a National Board Certificate of Authorization for use of the "R" stamp.
180.413(a)(1)	Severe Level I	Performing a repair of an ASME Code U stamped cargo tank while failing to hold a valid National Board Certificate of Authorization for the use of the R stamp. Note: ASME tanks only.
180.413(a)(1)	Severe Level I	Failing to perform a repair of an ASME Code U stamped cargo tank in accordance with the National Board Inspection Code. Note: ASME tanks only.
180.413(b)	Severe Level I	Failing to verify the suitability of a repair affecting the structural integrity of the cargo tank by testing as prescribed in the applicable specification or in § 180.407(g)(1)(iv).
180.413(c)	Severe Level I	Failing to leak test repairs done to piping or valves. Note: Not a leakage test as prescribed in § 180.407(h).
180.413(a)(1)(i)	Severe Level I	Performing a modification of a non-ASME Code stamped cargo tank while failing to hold a valid ASME Certificate of Authorization for use of the "U" stamp or National Board Cert. of Authorization for use of the "R" stamp. Note: Non-ASME tanks only.
180.413(a)(1)	Severe Level I	Performing a modification of an ASME Code "U" stamped cargo tank while failing to hold a valid National Board Certificate of Authorization for the use of the "R" stamp. Note: ASME tanks only.
180.413(d)(2)	Severe Level I	Failing to performing a (stretching, modification, or rebarreling) of a cargo tank to the applicable specification.
180.413(d)(1)	Severe Level I	Failing to have a (stretching, modification, or rebarreling) of a cargo tank certified by a Design Certifying Engineer.
180.413(d)(2)	Severe Level I	Failing to perform a (stretching, modification, or rebarreling) of an ASME Code U stamped cargo tank in accordance with the National Board Inspection Code. Note: ASME tanks only.
180.413(d)(3) (iv)	Severe Level I	Failing to verify the suitability of a modification affecting the structural integrity of the cargo tank with respect to pressure by testing as prescribed in the applicable specification or in § 180.407(g)(1)(iv). (Use for an inspection facility).
180.413(f)	Severe Level I	Failing to retain records of repair, modification, stretching, or rebarreling made to each tank, as required.
180.415	Critical	Failing to mark a cargo tank that passed an inspection or test required by § 180.407.

		Number checked is the number of cargo tanks checked for test markings.
180.416(f)	Severe Level I	Failing to properly test a new or repaired delivery hose assembly at a minimum of 120 percent of the hose maximum working pressure.
180.416(f)(2)	Severe Level I	Failing to permanently mark a new or repaired delivery hose assembly with the month and year of the pressure test.
180.417(a)(1)	Critical	Failing to retain cargo tank manufacturers data report or certificate and related papers, as required. Number checked is the number of cargo tanks checked for compliance with § 180.417(a)(1). Note: This is an Owners Requirement.
180.417(a)(2)	Critical	Failing to retain copies of cargo tank manufacturers certificate and related papers (or alternative report) as required. Number checked is the number of cargo tanks checked for compliance with § 180.417(a)(2). Note: This is a motor carrier requirement.
180.417(b)	Severe Level I	Failing to include all required information on test or inspection report.
180.417(b)(3)	Severe Level I	Failing to retain a copy of test and inspection reports as required.
180.417(c)(2)	Severe Level I	Failing to retain a copy of the addition report for MC330/331 cargo tanks as required.

Suggested Recommendations for Cargo Tank Facilities

The following is a list of recommendations which can be provided to a cargo tank facility as part of the close out and enter into CAPRI.

- Ensure that no cargo tank is marked or certified as having passed a test or inspection unless it has successfully completed the test or inspection. [180.3(a)]
- Do not mark or certify a newly constructed cargo tank to the MC 306, 307, or 312 cargo tank specifications. [180.405(b)]
- Ensure that cargo tanks which show evidence of bad dents, corroded or abraded areas, leakage, or any other condition that might render them unsafe for transportation, are tested and inspected. [180.407(b)(2)]
- Ensure that cargo tanks which have been out of hazardous materials transportation service for a period of one year or more are subjected to a pressure test in accordance with 180.407(g). [180.407(b)(3)]
- Obtain an ASME "U" Stamp or National Board "R" stamp before performing repairs, modifications, stretching, or rebarreling to non-ASME cargo tanks. [180.413(b)(1) or 180.413(d)(1)]
- Obtain a National Board "R" stamp before performing repairs, modifications, stretching, or rebarreling to ASME Code stamped cargo tanks. [180.413(b)(2) or 180.413(d)(2)]

- Ensure the quality control procedures used to obtain the "U" stamp or the "R" stamp are used when performing repairs, modifications, stretching, or rebarreling to non-ASME cargo tanks. [180.413(b)(1) or 180.413(d)(1)]
- Ensure the quality control procedures used to obtain the "R" stamp are used when performing repairs, modifications, stretching, or rebarreling, to ASME Code stamped cargo tanks. [180.413(b)(5) or 180.413(d)(9)]
- Ensure any stretching, modification, or rebarreling is conducted in accordance with the correct applicable specification as set forth in 180.413(d)(3). [180.413(d)(3)]
- Ensure any stretching, modification, or rebarreling of a cargo tank is certified by a Design Certifying Engineer. [180.413(d)(5)]
- Ensure the cargo tank registration is updated when any information reported on the cargo tank registration changes. [107.503(d)]
- Before conducting cargo tank tests, inspections, repairs, assembly, or manufacturing, ensure that the facility is registered as specified in 107.503(c). [107.503(b)]
- Ensure all cargo tanks have manholes conforming to 180.405(g). [180.405(g)]
- Ensure that if a reclosing pressure relief valve is replaced, it is replaced with a valve meeting 178.345-10. [180.405(h)]
- Ensure that all inspectors performing or witnessing a test or inspection on a cargo tank meet the minimum qualifications prescribed in 180.409. [180.407(a)(3)]
- Ensure that each external visual inspection is performed as prescribed in 180.407(d). [180.407(d)]
- Ensure that corroded or abraded areas discovered during an external visual inspection are thickness tested as prescribed in 180.407(i)(2), (3), (5), and (6). [180.407(d)(4)]
- Ensure that each internal visual inspection is performed as prescribed in 180.407(e). [180.407(e)]
- Ensure that corroded or abraded areas discovered during an internal visual inspection are thickness tested as prescribed in 180.407(i)(2), (3), (5), and (6). [180.407(e)(3)]
- Ensure that each lining inspection is performed as prescribed in 180.407(f). [180.407(f)]
- Ensure that each pressure retest is performed as prescribed in 180.407(g). [180.407(g)]
- Ensure that each wet fluorescent magnetic particle test is performed as prescribed in 180.407(g)(3). [180.407(g)(3)]
- Ensure that each leakage test is performed as prescribed in 180.407(h). [180.407(h)]
- If an EPA Method 27 Vapor Tightness Test is being used in replacement of the leakage test, ensure that it is conducted as required. [180.407(h)(2)]
- Ensure that each thickness test is performed as prescribed in 180.407(i). [180.407(i)]
- Ensure that thickness test readings are taken from all areas prescribed in 180.407(i)(4). [180.407(i)(4)]
- Ensure the suitability of each repair affecting the structural integrity of the cargo tank is tested in accordance with the applicable specification or in 180.407(g)(1)(iv). [180.413(b)(6)]
- Ensure that for each repair done to piping or valves which does not involved welding to the cargo tank wall, the applicable parts are leak tested. [180.413(c)]
- Ensure the suitability of each modification affecting the structural integrity of the cargo tank is tested in accordance with the applicable specification or in 180.407(g)(iv). [180.413(d)(10)].
- Ensure that each record of a test or inspection contains all required information prescribed in 180.417(b). [180.417(b)]

1.4.12.5 Cargo Tank Facility Reviews - Enforcement Procedures

- [What evidence is required to successfully prosecute a violation of Part 107 and 180?](#)
- [What documents should I look for when developing my enforcement report for a person failing to Register?](#)
- [What should I look for when developing my enforcement report on Part 180?](#)
- [What is "Knowledge and Willfulness?"](#)
- [What documents do I need for a Registration Enforcement Case?](#)
- [What documents do I need for a Part 180 Enforcement Case?](#)
- [How do I prepare the Exhibition Abstract?](#)
- [How do I prepare the Statement of Charges?](#)

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1.4.12.6 Procedures for Re-testing Cargo Tanks

[Why would the Agency require a cargo tank to be re-tested?](#)

[What is probable cause?](#)

[What is the decision making process for determining whether cargo tanks shall be retested?](#)

[How do I identify which cargo tanks should be inspected and for what time period?](#)

[What are the violations that should require the Agency to re-test a cargo tank?](#)

[How do I notify the company that cargo tanks should be retested?](#)

Why would the Agency require a cargo tank to be re-tested?

The FMCSA has the responsibility to ensure that cargo tanks are tested and inspected in accordance with the DOT specifications. This authority is granted pursuant to 49 U.S.C. " 5101 et seq., as delegated to the FMCSA by the Secretary of Transportation in 49 C.F.R. §

1.73(d)(1). Specifically, 180.407(b)(5) states: "...a specification cargo tank must be tested and inspected in accordance with this section prior to further use if: (5) The Department so requires based on the existence of probable cause that the cargo tank motor vehicle is in an unsafe operating condition."

Certain violations discovered during the inspection of a cargo tank or during a compliance review of a cargo tank facility that may indicate deficiencies in the testing and inspection process of facilities that perform these functions give rise that probable cause does exist and the Agency should require these cargo tanks to be re-tested.

What is probable cause?

Probable cause in the civil context is "reasonable ground for the belief of guilt, supported by less than prima facia proof but more than mere suspicion" (United States v. Three Hundred Sixty-Four Thousand, Nine Hundred Sixty Dollars, etc., 661 F. 2d 319, 322-323 (5th Cir. 1981), as cited in United States v. ON Leong Chinese Merchants Association Building, et al., 918 F. 2d 1289, 1292 (7th Cir. 1990), cert. denied, 502 U.S. 809 (1991)). An apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent man to believe, in a civil case, that a cause of action existed (Cook v. Singer Sewing Machine Co., 32 P. 2d 430, 431(Cal. Ct. App. 1934).

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What are the violations that should require the Agency to re-test a cargo tank?

If the following violations are discovered then consideration should be given to require all cargo tanks tested and inspected by the facility to be retested. The violations include but are not limited to the following:

180.405(b)	Marking or certifying a cargo tank to a specification no longer authorized. Applies to the marking and/or certification of MC 306, MC 307 and MC 312 cargo tanks after August 31, 1995.
180.407(b)(2)	Failing to test and inspect a cargo tank that has been in an accident and has been damaged to an extent that may adversely affect its lading retention capability.
180.407(b)(3)	Failing to conduct a pressure test in accordance with § 180.407(g) on a cargo tank which has been out of hazardous materials transportation service for a period of one year or more.
180.407(b)(4)	Failing to test and inspect a cargo tank which has been modified from its original design specification.
180.407(d)	Failing to perform an external visual inspection as prescribed in that the cargo tank was given an external visual inspection on [enter date within 2 months of current date if applicable] and : (2)(iv) The remote closure device failed to function as required. [date required] (2)(v) There were no fusible links or elements installed on the cargo tank as required. (2)(ix) The upper coupler was not removed to inspect the area above the upper coupler as required for a cargo tank transporting lading corrosive to the tank. (3) The reclosing pressure relief devices (PRD) on the cargo tank carrying lading corrosive to the valve was not removed and bench tested as required. (5) Corroded or abraded areas of the cargo tank were discovered where thickness testing is required and the facility performing the external visual inspection failed to thickness test as required. [date required]
180.407(e)	Failing to perform an internal visual inspection in accordance with 180.407(e)
180.407(f)	Failing to perform a lining inspection as prescribed in that the cargo tank was given a lining inspection on [enter date] and : (1)(ii) For the rubber lining that was tested, the facility could not produce a calibration coupon of the same material and thickness of the tank that was given a lining test. (1)(iii) The facility failed to recalibrate the spark tester as required.
180.407(g)	Failing to perform a pressure retest as prescribed in that the cargo tank was given a pressure test on [enter date] and : (1)(ii) And the self closing pressure relief devices were not removed from the cargo tank for inspection and testing as required. (1)(iii) The upper coupler was not removed to inspect the area above the upper coupler as required. (1)(iv) The prescribed test pressure of [enter required test pressure] was not used as required by the table in 180.407(g)(1)(iv) (1)(vii) All closures which comprise the lading retention area of the cargo tank wall were not in place during the test. (3) The facility failed to perform a wet fluorescent magnetic particle test on an MC 330/331 cargo tank.
180.407(h)	Failing to perform a leakage test as prescribed in that the cargo tank

	was given a leakage test on [enter date] and : (1) The prescribe test pressure of [enter required test pressure] was not used. (2) Failed to perform the EPA method 27 test as required in accordance Appendix A to 40 CFR part 60.
180.407(i)	Failing to perform a thickness test as prescribed in that the cargo tank was give a thickness test on [enter date] and: (3) The person performing the test was not trained in the proper use of the thickness testing device used in accordance with the manufacturer's instructions.
180.413(a)(1)(i)	Performing a repair of a non-ASME Code stamped cargo tank while failing to hold a valid ASME Certificate of Authorization for the use of the "U" Stamp or a National Board Certificate of Authorization for the use of the "R" stamp.
180.413(a)(1)	Performing a (stretching, modification, or rebarreling) of an ASME Code "U" stamped cargo tank while failing to hold a valid National Board Certificate of Authorization for the use of the "R" stamp.
180.413(a)(1)	Performing a repair of an ASME Code "U" stamped cargo tank while failing to hold a valid National Board Certificate of Authorization for the use of the "R" stamp.
180.413(b)	Failing to verify the suitability of a repair affecting the structural integrity of the cargo tank by testing as prescribed in the applicable specification or in § 180.407(g)(1)(iv).
180.413(a)(1)(i)	Performing a (stretching, modification, or rebarreling) of a non-ASME Code stamped cargo tank while failing to hold a valid ASME Certificate of Authorization for the use of the "U" Stamp or a National Board Certificate of Authorization for the use of the "R" stamp.
180.413(c)(1)	Failing to leak test repairs done to piping or valves.
180.413(d)(3)(iv)	Failing to verify the suitability of a modification affecting the structural integrity of the cargo tank with respect to pressure by testing as prescribed in the applicable specification or in § 180.407(g)(1)(iv). (Use for an inspection facility).

How do I notify the company that cargo tanks should be retested?

Here is a sample letter that should be used to notify companies that their cargo tanks will be required to be retested.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Mr. John Tanker, President
Tank Testing Incorporated
50 Oil Street
Anytown, USA

Dear Mr. Tanker:

RE: Best Test and Inspections, Inc. CT Facility #0000

As a result of a compliance review conducted at [insert name of facility] on [insert date], by the [insert state code] Division of the Federal Motor Carrier Safety Administration (FMCSA), serious violations of the Hazardous Material Regulations (HMR) that support the existence of probable cause that these cargo tanks are in an unsafe operating condition. The requirements in Subpart E of 49 CFR Part 180, Qualification and Maintenance of Cargo Tanks address the test and inspection requirements for cargo tanks. The Department has determined that tests and inspections performed by [insert name of facility] were not conducted in accordance with these requirements because [insert reason] (for example: improper testing equipment and methods were used to perform tests and inspections to specification cargo tanks.

The requirements in 49 CFR § 180.3(a) states that “No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this part, or an exemption pertaining to this part issued under subchapter A of this chapter, whether or not the packaging or container is intended to be used for the transportation of a hazardous material, unless it is marked, maintained, reconditioned, repaired or retested, as appropriate, in accordance with this part, an approval issued there under, or an exemption issued under subchapter A of this chapter.” In addition, 49 CFR § 180.407(a) states: “A cargo tank constructed in accordance with DOT specification for which a test or inspection specified in this section has become due, may not be filled and offered for transportation or transported until the test or inspection has been successfully completed” and § 180.407(b)(5) further states: “The Department so requires based on the existence of probable cause that the cargo tank is in an unsafe operating condition.”

The regulations go on to say in 49 CFR § 171.1(c) that “Any person who knowingly violates a requirement of the Federal hazardous material transportation law, an order there under, subchapter A, an exemption issued under subchapter A, of this subchapter, is liable for a civil penalty of not more than \$32,500 and not less than \$250 for each violation. When the violation is a continuing one and involves the transporting of hazardous materials or the causing of them to be transported or shipped, each day of the violation constitutes a separate offense. Any person who knowingly violates 49 CFR § 171.2(g) of this subchapter or willfully violates a provision of the Federal hazardous material transportation law or an order or regulation issued there under shall be fined under Title 18, United States Code (USC), or imprisoned for not more than 5 years, or both.”

Our records indicate that Tank Testing Incorporated performed External Visual (V), Leakage (K) and Pressure (P) tests and inspections on the following DOT specification cargo tank motor vehicles that your company owns or operates:

Test Date	Description of Tank	DOT Spec.	Unit No.	Serial No.
06/30/04	1987 Beall-Transliner	MC 306S TP-1	6052	
07/10/04	Columbia Cargo Tank	MC 306AL	328HB	TT6090

The purpose of this letter is to put you, Tank Testing Incorporated, on notice that the FMCSA would consider it a violation of the hazardous material transportation law to use these cargo tank motor vehicles before they have been re-inspected and re-tested in accordance with 49 CFR § 180.407(c) by a facility which is properly registered with the Department.

If you have any questions, please contact me at [insert phone number of person signing letter] or [insert name of person who can also answer questions].

Sincerely,

[Insert Division Administrators Name]

Division Administrator

1.4.12.7 Suggested Recommendations for Cargo Tank Facilities

- The following is a list of recommendations which can be provided to a cargo tank facility as part of the MCS-150 Part B.
- Ensure that no cargo tank is marked or certified as having passed a test or inspection unless it has successfully completed the test or inspection. [180.3(a)]
- Do not mark or certify a newly constructed cargo tank to the MC 306, 307, or 312 cargo tank specifications. [180.405(b)]
- Ensure that cargo tanks which show evidence of bad dents, corroded or abraded areas, leakage, or any other condition that might render them unsafe for transportation, are tested and inspected. [180.407(b)(2)]
- Ensure that cargo tanks which have been out of hazardous materials transportation service for a period of one year or more are subjected to a pressure test in accordance with 180.407(g). [180.407(b)(3)]
- Obtain an ASME "U" Stamp or National Board "R" stamp before performing repairs, modifications, stretching, or rebarreling to non-ASME cargo tanks. [180.413(b)(1) or 180.413(d)(1)]
- Obtain a National Board "R" stamp before performing repairs, modifications, stretching, or rebarreling to ASME Code stamped cargo tanks. [180.413(b)(2) or 180.413(d)(2)]
- Ensure the quality control procedures used to obtain the "U" stamp or the "R" stamp are used when performing repairs, modifications, stretching, or rebarreling to non-ASME cargo tanks. [180.413(b)(1) or 180.413(d)(1)]
- Ensure the quality control procedures used to obtain the "R" stamp are used when performing repairs, modifications, stretching, or rebarreling, to ASME Code stamped cargo tanks. [180.413(b)(5) or 180.413(d)(9)]
- Ensure any stretching, modification, or rebarreling is conducted in accordance with the correct applicable specification as set forth in 180.413(d)(3). [180.413(d)(3)]
- Ensure any stretching, modification, or rebarreling of a cargo tank is certified by a Design Certifying Engineer. [180.413(d)(5)]
- Ensure the cargo tank registration is updated when any information reported on the cargo tank registration changes. [107.503(d)]

- Before conducting cargo tank tests, inspections, repairs, assembly, or manufacturing, ensure that the facility is registered as specified in 107.503(c). [107.503(b)]
- Ensure all cargo tanks have manholes conforming to 180.405(g). [180.405(g)]
- Ensure that if a reclosing pressure relief valve is replaced, it is replaced with a valve meeting 178.345-10. [180.405(h)]
- Ensure that all inspectors performing or witnessing a test or inspection on a cargo tank meet the minimum qualifications prescribed in 180.409. [180.407(a)(3)]
- Ensure that each external visual inspection is performed as prescribed in 180.407(d). [180.407(d)]
- Ensure that corroded or abraded areas discovered during an external visual inspection are thickness tested as prescribed in 180.407(i)(2), (3), (5), and (6). [180.407(d)(4)]
- Ensure that each internal visual inspection is performed as prescribed in 180.407(e). [180.407(e)]
- Ensure that corroded or abraded areas discovered during an internal visual inspection are thickness tested as prescribed in 180.407(i)(2), (3), (5), and (6). [180.407(e)(3)]
- Ensure that each lining inspection is performed as prescribed in 180.407(f). [180.407(f)]
- Ensure that each pressure retest is performed as prescribed in 180.407(g). [180.407(g)]
- Ensure that each wet fluorescent magnetic particle test is performed as prescribed in 180.407(g)(3). [180.407(g)(3)]
- Ensure that each leakage test is performed as prescribed in 180.407(h). [180.407(h)]
- If an EPA Method 27 Vapor Tightness Test is being used in replacement of the leakage test, ensure that it is conducted as required. [180.407(h)(2)]
- Ensure that each thickness test is performed as prescribed in 180.407(i). [180.407(i)]
- Ensure that thickness test readings are taken from all areas prescribed in 180.407(i)(4). [180.407(i)(4)]
- Ensure the suitability of each repair affecting the structural integrity of the cargo tank is tested in accordance with the applicable specification or in 180.407(g)(1)(iv). [180.413(b)(6)]
- Ensure that for each repair done to piping or valves which does not involved welding to the cargo tank wall, the applicable parts are leak tested. [180.413(c)]

- Ensure the suitability of each modification affecting the structural integrity of the cargo tank is tested in accordance with the applicable specification or in 180.407(g)(iv). [180.413(d)(10).
- Ensure that each record of a test or inspection contains all required information prescribed in 180.417(b). [180.417(b)]

1.4.12.8 Information Collection for Structural Analysis

Structural Integrity of the Tank

1. Production drawings of the tank including all dimensions and date of manufacture. This includes but is not limited to:
 - 1.a.Length of tank (without shell)
 - 1.b.Dimensions of the shell (for an ellipse height and length).
 - 1.c.Thickness of the shell and head.
 - 1.d.Dimensions of head (depth, radius, and knuckle radius).
 - 1.e.Location and dimensions of any baffles or bulkheads.
 - 1.f.Location of all welds and the weld process, type of weld, welding material, and joint efficiency.
 - 1.g.Location of internal valves and weld process.
 - 1.h.Distance from 5th wheel pivot point to middle of tank (or end of kingpin to middle of tank if tractor is unavailable).
 - 1.i.Location of all tank supports (frames, wheels, suspensions, king pin).
 - 1.j.Location of all appurtenances and pads for attaching appurtenances.
 - 1.k.Locations and information on any linings, insulation, hose tubes, cabinets and piping.
 - 1.l.Height from ground to center of the tank (preferably when full).
2. Material specifications for all tank materials. This includes mill test reports, tensile pull results, copies of the specs for ASTM references as well as industry references i.e. U. S. Steel Handbook. Review hard copies of any reference material used by the manufacturer.
3. Any and all design calculations that may be available. If no calculations or drawings are available, ask the management to have them done.
4. Tank capacity in gallons as well as capacity of individual compartments if applicable.
5. Maximum product density.
6. Maximum design weight of lading.
7. Gross vehicle weight rating.
8. Weight of undercarriage.
9. Weight of tank and appurtenances.
- 10.All information from the specification plate and the name plate.
- 11.Pictures of the tank.

Overturn Protection Devices.

1. Production drawings of overturn damage protection devices including all dimensions and methods of attachment to the tank. This includes but is not limited to:
2. Location of devices on tanks.
3. Dimensions of the devices themselves including thickness.

4. Location, thickness, and dimensions of any pads for attachment to the tank.
5. Types of welds, welding process, welding materials, and joint efficiencies.
6. Location, dimensions, and method of attachment of any extra bracing such as end dams or gusset plates.
7. Material specifications for all materials used to manufacture overturn protection devices and materials used to attach these devices to the tank. Review hard copies of any reference material used by the manufacturer.
8. Review design calculations to verify that overturn protection devices satisfy the criteria. If no calculations are available, ask the management to have them done.
9. Pictures of the over-turn device.

Rear-end Protection Devices

1. Production drawings of the rear-end protection device, including all relevant dimensions and methods of attachment to the cargo tank motor vehicle. This includes but is not limited to:
 - 1.a. Dimensions of the device itself
 - 1.b. Location and Types of welds, welding process, welding materials, and joint efficiencies of any and all welded joints.
 - 1.c. Size and materials specifications of any plates, bolts, or other fastening device used for attachment to the tank.
2. Materials specifications for all materials used to manufacture the rear-end protection device and attach it to the vehicle. This must include welding and bolting materials were applicable. Again hard copies of any references used are necessary.
3. Review design calculations or test results to verify that rear-end protection devices satisfy the requirements. If such calculations are not available, ask the management to have them done.
4. Pictures of the rear-end protection device and its attachment to the vehicle.

Bottom Damage Protection

1. Production drawings of bottom damage protection devices including all relevant dimensions and methods of attachment to the tank. If the bottom damage protection consists of a safety cage see numbers 12 and 16. If the bottom damage protection consists of a shear section please provide:
 - 1.a. Inner and outer diameter of the nominal piping.
 - 1.b. Inner and outer diameter of the pipe at the shear section.
 - 1.c. Specifications on the piping material.
2. Material specifications for all materials used to manufacture bottom damage protection devices and materials used to attach these devices to the tank. Review hard copies of any reference material used by the manufacturer.
3. Review design calculations of bottom damage protection devices. If calculations are not available ask management to have them done.
4. Pictures of the bottom damage protection.

1.4.12.9 Illustration HM-16 - Exhibit Abstract for Part 107

EXHIBIT ABSTRACT

EXHIBIT NUMBER 1

INVESTIGATION NUMBER: WW-XX-YY-US0ZZZ

SECTION NUMBER: 107.502(b)

DESCRIPTION: Manufacturing, assembling, certifying, inspecting, or repairing a cargo tank motor vehicle manufactured to a DOT specification, without registering.

(This description of the violation must be the same wording that is used in Part B of the Compliance Review, in the Statement of Charges of the Notice of Claim and on the cover sheet of the Case Report).

REMARKS: (This description of the violation should contain all of the required elements of proof).

On July 7, 2001, Bills Tank Service performed an external visual inspection on a DOT 406 cargo tank, marked the tank as successfully passing the external visual inspection and was not registered with the Department to perform this function.

DOCUMENTS:

1. Copy of oral interview with HM Division indicating there is no record of Bills Tank Service having registered with the Department.
2. Copy of external visual inspection report dated July 7, 2001 signed by Bill Smith, owner of Bills Tank Service.
3. Copy of signed statement of Bill Smith, owner of Bills Tank Service, dated July 31, 2001 confirming that neither Bill Smith or his company, Bills Tank Service, has registered with the Department in accordance with § 107.502(b).

1.4.12.10 Illustration HM-17 - Exhibit Abstract for Part 180

EXHIBIT ABSTRACT

EXHIBIT NUMBER 1

INVESTIGATION NUMBER: WW-XX-YY-US0ZZZ

SECTION NUMBER: 180.407(d)

DESCRIPTION: Failing to perform an external visual inspection as required.

(This description of the violation must be the same wording that is used in Part B of the Compliance Review, in the Statement of Charges of the Notice of Claim and on the cover sheet of the Case Report).

REMARKS: *(This description of the violation should contain all of the required elements of proof.)*

On July 25, 2001, Joes Tank Service performed an external visual inspection on a DOT 412 cargo tank that was last used to transport a corrosive liquid. The tank had not been inspected and tested in accordance with § 180.407(d).

An inspection of the tank on July 31, 2001, discovered corroded and abraded areas of the cargo tank shell which required thickness testing. A review of the test and inspection report, a review of the work order and an oral interview with Joe Smith confirmed that Joes Tank Service does not own a thickness tester and was unaware of the requirement to perform thickness test on corroded and abraded areas of the cargo tank shell.

DOCUMENTS:

1. Copy of external visual inspection report from Joes Tank Service, dated July 25, 2001.
2. Copy of the work order dated July 25, 2001 without any reference to a thickness test being performed.
3. Copy of inspection reported dated July 31, 2001, documenting a gouge on the front head of the tank.
4. Copies of photographs documenting the markings on the side of the tank indicating the tank was last visually inspected during the month of July 2001, the specification plate indicating this cargo tank is a specification tank, and a gouge mark on the front head 1/16 of an inch thick showing a visible reduction in the material at this location.
5. Copy of signed statement of Joe Smith, owner of Joes Tank Service, dated July 31, 2001, verifying that no thickness test was performed on corroded and abraded areas of this tank.

1.4.12.11 Illustration HM -18 - Sample Letter to Solicit Comments on Engineering Analysis

Certified Return Receipt Requested

On (Month, Day) , (Year) , investigators of the Federal Motor Carrier Safety Administration (FMCSA), visited your manufacturing plant in _____, and conducted a review and analysis of your Department of Transportation (DOT) specification cargo tank designs for compliance with the requirements of 49 C.F.R. part 178, subpart J. This review was conducted pursuant to authority in 49 U.S.C. §§ 5101 et seq., as delegated to the FMCSA by the Secretary of Transportation in 49 C.F.R. § 1.73(d)(1). The FMCSA's analysis of the data examined during this review indicates that _____ cargo tank designs manufactured and certified as complying with the requirements applicable (type of cargo tank) cargo tanks, fail to meet DOT specifications. The summary report and supporting analysis are enclosed for your review.

The enclosed analysis indicates a possible noncompliance with DOT specifications in the following areas:

(1) Inadequate _____, as defined in 49 C.F.R. § 178._____, in that the _____ on ___ of the ___ tanks is not _____;

(2) Inadequate _____, as defined in 49 C.F.R. § 178._____, in that the _____.

Before initiating enforcement action against your company and carriers using (type of cargo tank) cargo tanks manufactured by your company, the FMCSA would like to provide you the opportunity to review and respond in writing to our analysis and findings. Your response should address each of the areas discussed above and be supported by credible analysis conducted by an independent Registered Design Certifying Engineer (a licensed professional engineer). In those areas where there are no disputes to our analysis and findings please provide proposed corrective actions to correct the deficiencies. Any written response will be given immediate attention.

If no written response is received within 45 days from the date of receipt of this letter, the FMCSA may commence enforcement action against your company, which may include civil and criminal penalties pursuant to 49 U.S.C. §§ 5122-5124. Additionally, we may move for an injunction and/or the imposition of punitive penalties in the appropriate United States District Court against your company for continued certification of deficient cargo tanks as meeting the DOT specifications, as authorized by 49 U.S.C. § 5122. Finally, the FMCSA may also initiate enforcement actions against those companies and individuals that have purchased and/or currently own and use the identified cargo tanks in transportation.

If you have any questions concerning the above matter, please contact _____
(Name and title) at _____.

Sincerely,

Division Administrator/State Director

1.4.13 Security Assessments of HM Companies

[Investigative Procedures](#)

1.4.13.1 HM Security - Investigative Procedures

How does FMCSA address HM Security?

FMCSA addresses security issues as a component of the Hazardous Materials Safety program. The Compliance Review (CR) process has been modified to include security measures an integral part of all hazardous materials CRs. The motor carrier will be offered a specific set of recommendations for improving security.

In addition, FMCSA will identify the highest risk carriers of hazardous materials for Security Contact Reviews (SCRs). The SCR includes an actual review of facilities, security policies, security plans, and driver files for companies that transport the most high-risk hazardous materials (e.g. high explosives, bulk quantities of poison inhalation hazard materials, and highly radioactive materials). FMCSA documents the results of the SCR, and provides a copy of the report to the carrier along with a specific set of recommendations for improving security.

What is a SCR?

A SCR is a stand-alone review of a transportation entity that will evaluate the company's security posture. The SCR can be performed independently or in conjunction with any other

type of FMCSA review (i.e., HMCR, Cargo Tank Facility Review (CTFR), Safety Audit or Shipper Review). SCRs are non-ratable reviews when conducted as a stand alone review, but may result in enforcement actions.

When must an SCR be conducted?

SCRs are to be performed on motor carriers and/or shippers that are required to have a transportation security plan, per Subpart I of the HMR. Shippers and carriers required to have a security plan are those that ship or transport:

- A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in 49 CFR 173.403, in a motor vehicle, rail car, or freight container;
- More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;
- More than one liter (1.06 qt) per package of a material poisonous by inhalation, as defined in 49 CFR 171.8, that meets the criteria for Hazard Zone A, as specified in §§ 173.116(a) and 173.133(a);
- A shipment of a quantity of hazardous materials in a bulk packaging having a capacity equal to or greater than 13,248 liter (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;
- A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class under the provisions of 49 CFR 172 subpart F;
- A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR Part 73; or
- A quantity of hazardous material that requires placarding under the provisions of 49 CFR 172 subpart F.

If in the course of a safety audit or compliance review, it is determined that the carrier is required to have a security plan in accordance with Subpart I of 49 CFR Part 172, an SCR must be performed in conjunction with the review or audit. A SCR should not be conducted on a company that has received a SCR within the previous 12 months, unless there is reason to believe that they are not complying with security requirements.

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The FMCSA Emergency Coordinators are:

- Eastern Service Center – Joe Evans
- Southern Service Center – Joel Hiatt
- Midwestern Service Center – Joe DeLorenzo
- Western Service Center – Richard Swedberg
- Headquarters – Mark Gerade

1.4.14 Using HMPIP Software

[HMPIP Policies and Procedures](#)

[Notification of Packaging Violations](#)

[HM Packaging Inspection Compliance Review](#)

[Illustration HM-18 Assigning USDOT Numbers](#)

[Illustration HM-19 Sample Letter To Accompany HMPIP Violation Reports](#)

1.4.14.1 HMPIP Policies and Procedures

What is the goal of using HMPIP?

The goal of performing Hazardous Materials Packaging Inspection Program (HMPIP) inspections is to reduce the risk of HM incidents (spills) by identifying HM shippers that are not in compliance with the Hazardous Material Regulations (HMRs). HMPIP package inspections shall be performed at dockside, less-than-truckload motor carriers, inter-modal facilities, shippers with inbound shipments made to a shipper, or other locations where a wide variety of HM packages from various shippers are available for inspection. HM package inspections will be recorded using HMPIP and distributed according to the procedures outlined in this section.

How is HMPIP Used?

All package inspections will be recorded using the HMPIP program even if no violations are found. USDOT numbers should be assigned to newly identified shippers prior to exporting the data to the national HMPIP database. For purpose of FMCSA tracking, 30 package inspections by a given investigator using HMPIP will continue to constitute an HM Package Inspection Compliance Review. The HMPIP software shall be used to record information on a package inspection that occur at any location other than the place where the HM package originated. The CAPRI software should be utilized when conducting inspections at an HM shipper's facility when the package originates from that shippers facility. See [Illustration HM-4](#) – HM Package Inspection Question and Answer.

How do I assign USDOT numbers when conducting an inspection using the HMPIP?

The [illustration HM-18](#) describes the process for assigning USDOT Numbers during a shipper checks and when conducting HM package inspections.

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1.4.14.2 Notification of Packaging Violations

How many copies of the HMPIP report should be printed and how are they distributed?

HMPIP reports should be printed for inspections that identify violations of the hazardous materials regulations. Three copies of the HMPIP report should be made and distributed as follows:

- One copy of the HMPIP report, with your notes, should be provided to a responsible official representing the facility where the inspections were performed. This copy may be mailed later if the report is not generated on site.
- One copy of the HMPIP report, with your notes, should be mailed to the shipper's facility where the hazardous material shipment originated. A copy of the attached sample letter should accompany the report. At the discretion of the Division Administrator/State Director, an additional copy of the report and cover letter may be sent to the shipper's principal place of business. The [Illustration HM-19](#), below is a Sample Letter to Accompany HMPIP Violation Reports.
- You should maintain a copy of the HMPIP report with your notes along with a copy of the cover letter used to notify the shipper at the division office performing the Hazardous Material Package Inspection Compliance Review. These documents may also be used as the basis for an enforcement action.

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1.4.14.5 Illustration HM-19 - Sample Letter

Sample Letter to Accompany HMPIP Violation Reports

(Date)

(Name and address of shipper facility)

Subject: Violation(s) of the Hazardous Materials Regulations (49 C.F.R. Parts 100-185)

Dear (name of contact, if known):

The Federal Motor Carrier Safety Administration conducted an HM Package Inspection on a hazardous materials shipment that originated at your facility to determine your compliance with the Federal Hazardous Materials Regulations (FHMRs). As a result of this review, violations were discovered. Attached is a report listing violation(s) discovered, along with shipment information and inspection location/date.

Noncompliance with the Hazardous Materials Regulations necessitates immediate corrective action on your part. "Persons" violating provisions of the FHMRs may be subject to civil penalty of not less than \$250 and not more than \$27,500 per violation. When the violation is a continuing one, each day of the violation constitutes a separate offense. Depending on the seriousness of your facility's violation(s), an enforcement proceeding may be initiated against your company.

If further information is needed, please contact (insert investigator's name) at (insert investigator's telephone number).

Sincerely,

(Insert Name)
State Director/Division Administrator

1.4.15 Household Goods (HHG)

[Introduction](#)

[Part 365, 366, 387, & 392 - Licensing & Insurance Registration Requirements](#)

[Part 370 - Principles and Practices for the Investigation and Voluntary Disposition of Loss and Damage Claims](#)

[Part 375 - Household Goods](#)

[Recommendations](#)

[Enforcement Procedures for Parts 366, 370, and 375](#)

[Illustration HHG-1 - Exhibit Abstract](#)

1.4.15.1 Household Goods - Introduction

[FMCSA's Role](#)

[Definitions](#)

[Criminal Activity](#)

[Compliance Review Procedures](#)

FMCSA's Role

What is FMCSA's policy for enforcing and administering the household good regulations?

It is the policy of the Federal Motor Carrier Safety Administration (FMCSA) to administer a comprehensive and effective household goods compliance and enforcement program that

uses education, outreach, and enforcement strategies to achieve its objectives. FMCSA will administer a comprehensive compliance and enforcement program that concentrates on the most problematic HHG carriers and brokers.

What Federal jurisdiction do we have over HHG motor carriers that operate for-hire in interstate commerce?

The Household Goods Consumer regulations are included in Part 375 of the Federal Motor Carrier Safety Regulations (FMCSR), and specifically apply to household goods carriers and household goods brokers.

Other regulations that apply to HHG motor carrier operations include:

- **Part 365.109(a)(6)** - FMCSA review of the applications
- **Part 366** - Designation of Process Agent
- **Part 370** - Principles and Practices for the Investigation and Voluntary Disposition of Loss and Damage Claims
- **Part 372** - Exemptions, Commercial Zones and Terminal Areas
- **Part 387**- Minimum Levels of Financial Responsibility for Motor Carriers
- **Part 392.9a(a)** - Operating Authority

What are your responsibilities as an Investigator, Auditor, or Inspector?

Investigators, Auditors, and Inspectors are responsible for being familiar with the household goods regulations and determining compliance with the household goods regulations when conducting audits, inspections and reviews on HHG carriers. You may also be asked to assist the Commercial Program Specialists with in-depth investigations.

 **Definitions**

What are some of the basic definitions that will be used in discussing HHG transportation?

You may encounter the following definitions and terms when you conduct compliance reviews or enforcement actions on HHG motor carriers:

110% rule - When the actual transportation charges exceed the non-binding estimated charges provided by the HHG motor carrier, the carrier is required, by Section 375.217(e), to allow shippers to take possession of their goods upon payment of 110% of the original non-binding estimate at destination. The carrier must bill the shipper for the payment of the balance of any remaining charges 30 days after delivery

Agents - A HHG motor carrier is allowed to use agents as part of their operations. HHG agents do not perform the services of HHG brokers or freight forwarders. A HHG agent differs from a HHG broker, in that, the HHG agent as part of a contractual agreement is allowed to act on behalf of the principal carrier. For example, in most instances agents are local moving companies that are authorized to act on behalf of a larger national company. HHG agents are defined in Section 375.205 as either one of the following two types of agents:

- **Prime agents** - all agents who are permitted or required under the terms of any agreement or arrangement with a principal carrier to provide any transportation service on behalf of the principal carrier, including the selling of or arranging for any transportation service, loading and unloading of household goods and who perform

such services on other than an emergency or temporary basis; and

- **Emergency or temporary agent** - provides origin or destination services on the carrier's behalf, excluding the selling of, or arranging for, a transportation service. The agent performs such services only on an emergency or temporary basis.

Arbitration program - As a condition for registration, Section 375.211 requires HHG motor carriers to offer arbitration as a means of settling damage or loss to household goods transported.

Bill of lading - The receipt or bill of lading is the contract for services between the HHG motor carrier and shipper and must comply with the provisions of Section 375.505. A copy of the receipt or bill of lading and its attachments must be given to the shipper before the vehicle leaves the origin.

Broker - Part 371 defines a broker as a person who, for compensation, arranges, or offers to arrange the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.

49 C.F.R. Section 375.409 requires that HHG motor carriers have written agreements in effect with all HHG brokers that provide shipper estimates on behalf of the motor carrier.

Commercial Zones - Part 372 provides for certain exemptions of for-hire interstate transportation, including household goods. Subpart B of Part 372 - Commercial Zones exempts for-hire interstate transportation that is transported within specific geographical areas.

Estimates - Subpart D of Part 375 allows HHG carriers to provide one of two types of estimates to prospective shippers, including:

- **Binding** - the mover guarantees the price for all agreed upon transportation and transportation related services prior to the move ("Guarantee" "Not to Exceed" "Flat Rate" estimates are not binding estimates); or
- **Non-binding** - the mover provides a reasonably accurate estimated price based on weight or volume and any accessorial services required. (as prescribed in the carrier's tariff)

All estimates provided to shippers must be in writing and must comply with Sections 375.401, 403 and 405.

Freight Forwarder- means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments; assumes responsibility for the transportation from the place of receipt to the place of destination; and uses for any part of the transportation a carrier subject to jurisdiction under this subtitle. The term does not include a person using transportation of an air carrier subject to part A of subtitle VII.

Hostage Freight - This is a term that describes one of the most egregious violations in the household goods industry. It involves motor carriers that withhold delivery of an individual shipper's household goods until they are paid a demanded price. At a minimum, holding household goods "hostage" means the knowing and willful refusal to deliver a shipment of household goods unless the shipper pays more than 100 percent of a binding estimate or in the case of a nonbinding estimate, more than 110 percent of the estimated charges for shipment. This practice has led to exorbitant and unjustified payments, and the complete loss of a family's possessions. It is a very serious violation, with very serious criminal penalties. Note: This term is currently not found in the FMCSRs.

Individual Shipper - Includes any person who is identified as the shipper or consignee on the household goods bill of lading contract. The individual shipper owns the goods being transported and pays the transportation charges. It does not include moves involving business equipment or employee moves paid by businesses or the government. The FMCSA consumer protection regulations for household goods were promulgated to protect individual shippers from abuse by the moving industry.

Insurance Filing - In addition to having the minimum amounts of Bodily Injury & Property Damage insurance (BI&PD) and cargo insurance in effect, HHG motor carriers, like all for-hire motor carriers, are also required to file evidence of BI&PD and cargo insurance with FMCSA as a condition for registration, as required by Part 387, Subpart C.

Loss and Damage Claims - When their household goods are lost or damaged during transportation, shippers are allowed to file a claim with the HHG motor carrier to recover the costs for the lost or damage items. HHG motor carriers are required to follow specific guidelines when handling and investigating loss and damage claims as provided by Part 370.

Low-ball Estimates - An illegal practice of intentionally luring shippers into using the services of a HHG motor carrier by intentionally providing a low estimate of the cost to transport their household goods. Once the actual charges are assessed and submitted to the shipper they are usually substantially higher than the original estimate quoted. Note: This term is currently not found in the FMCSRs.

Operating Authority - Motor carriers that transport household goods for-hire in interstate commerce are required to register with FMCSA and obtain the appropriate certificate or permit as required by Section 392.9a.

Orders for Service - Prior to loading a shipment of household goods, every HHG motor carrier must prepare an Orders for Service, which must include specific information, as provided by Section 375.501(a). The Orders for Service is a written list of all the services the HHG motor carrier will perform and shows the dates the household goods will be picked up and delivered.

Process Agent - Part 366 requires every HHG motor carrier to make a designation naming a person that will accept service of process on their behalf in each State in which it is authorized to operate and for each State traversed during such operations. The carrier must file a Designation of Process Agent form BOC-3 with FMCSA as a condition for obtaining registration.

Tariffs - A tariff is a published schedule of the rates and charges assessed by the HHG

motor carrier for transporting and handling household goods in interstate commerce. The tariff is the HHG motor carrier's legal basis for the charges they assess for transporting and handling HHG shipments and is required by Section 375.215 & USC 49, Section § 13702.

Your Rights and Responsibilities When You Move - This pamphlet provides a detailed explanation of the HHG carrier's responsibilities, the documents shippers will be asked to sign, and also explains what the shipper's rights are if their household goods are lost or damaged. HHG motor carriers are required to provide prospective individual shippers with a copy of Your Rights and Responsibilities When You Move (Publication OCE-100) as required by Section 375.213.

Weight ticket - When a shipment's transportation charges are based upon the actual weight, every HHG motor carrier transporting household goods on a non-binding estimate must determine the weight of each shipment transported prior to the assessment of any charges. The weight ticket is the document used to record the weight of the household goods being transported and is required by Section 375.507. **Note:** HHG motor carriers are allowed to transport HHG shipments whose charges are based upon Volume (Cubic feet) as long as these charges are provided for its tariff.

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What should I be aware of when reviewing Parts and Sections applicable to HHG motor carrier operations when conducting a compliance review?

When reviewing compliance with the applicable Parts 365, 366, 370, 372 and 375, 387, 392.9a(a) and USC 49, Section 13702 requirements, you should use the following guidelines to assist in your investigation of HHG motor carriers.

What are the Acute and Critical Regulations?

There are no acute or critical regulations in the commercial regulations because these regulations are not used to determine a carrier's safety rating. As guidance, you should consider the protection of the shipper and their household goods and cite those violations that may result in harming shippers economically. Generally, household goods regulations violations will be of two types:

- **Severe Level I Violations** - These are violations within the Federal Motor Carrier Commercial Regulations (FMCCRs) and Statutes that demand immediate corrective actions by the HHG motor carrier. Enforcement action is strongly recommended when a violation is discovered during the review that is identified as severe in the following table. In all cases, when enforcement action is not initiated, you should provide an explanation in Part C of the Compliance Review report.
- **Severe Level II Violations** - These violations of the FMCCRs indicate a breakdown in the management controls of the HHG motor carrier operations. When a violation is discovered that is a Severe Level Violation II, that has or will result in harm to the shipper to either occurrence, enforcement action is recommended. Otherwise, enforcement action for a Severe Level Violation II is taken upon the discovery of an unacceptable level of compliance. Non-compliance with Severe Level II Violations is generally considered unacceptable when the violation frequency meets or exceeds 10%. Enforcement action is optional, however, for a violation frequency at or slightly over 10% in justified circumstances. In all cases, when enforcement action is not initiated and the violation frequency is over 10%, you should provide an explanation in Part C of the Compliance Review report.

Initiating Capri**Since Compliance Reviews that cover our Commercial Regulations are "Non-Ratable" how do I indicate this on the Review?**

When conducting commercial only compliance reviews, the review type of "Non-Ratable" should be selected in CAPRI. At the present time you will list the reason for Non-Ratable as "Commercial Review". If a commercial compliance review is being conducted in conjunction with a safety compliance review, you would follow the normal procedures for entering "Ratable" data appropriately. Also, in Part C, General tab, enter HHG under "Special Studies".

1.4.15.2 Part 365, 366, 387, & 392 - Licensing & Insurance Registration Requirements

[Investigative Procedures](#)
[CAPRI Procedures](#)

Investigative Procedures

What is FMCSA's jurisdiction in regards to HHG motor carriers registration & filing requirements?

FMCSA requires that all motor carriers who transport household goods as a for-hire motor carrier in interstate commerce beyond the commercial zone are registered and have submitted the proper filings.

What are the authority and insurance filing requirements?

HHG motor carriers who operate for-hire in interstate commerce (beyond their commercial zone) transporting household goods are subject to:

- Obtaining operating authority (MC #)
- Maintaining active MC authority at all times
- Filing the required insurance and process agent (Form BOC-3) to FMCSA's Commercial Enforcement Division

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How do I record violations of Part 365, 366, 387 & 392.9a(a) regulations?

You should record the number checked as follows:

Note: Drivers Checked/Vehicles Checked must be 0 of 0

Violations of Parts 365, 366, 387 & 392.9a(a)

CITATION	TYPE	DESCRIPTION
365.109(a) (6)	General	Failing to have on file Designation of Agent for Service of Process (Form BOC-3) with the Federal Motor Carrier Safety Administration. Number discovered:- (first-time Compliance Review) one of one; Subsequent Compliance Reviews - one each instance in which it transported for-hire interstate shipments in violation of Section 365.109(a)6) ;
366.4(a)	General	Failing to have a Designation of Agent for Service of Process. Number discovered:- (first-time Compliance Review) one of one; Subsequent Compliance Reviews - one each instance in which it transported for-hire interstate shipments in violation of Section 366.4) ;
387.7(a)	Severe Level I	Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. Number discovered: One each occurrence Note: Use only when citing a carrier that operates vehicles with a GVWR greater than 10,000 lbs.
387.301(a)	Severe Level	Failing to file evidence of public liability insurance with the

	I	Federal Motor Carrier Safety Administration. Number discovered: One filing. (one of one)
387.301(b)	Severe Level I	Failing to file evidence of cargo insurance with the Federal Motor Carrier Safety Administration. Number discovered: One of one
387.303(b)	Severe Level I	Failing to maintain adequate public liability insurance as required by the Federal Motor Carrier Safety Administration. Number discovered: One each occurrence. Note: Use only when citing a carrier that operates vehicles with a GVWR less than 10,000 lbs.
387.303(c)	Severe Level I	Failing to maintain adequate cargo insurance as required by the Federal Motor Carrier Safety Administration. Number discovered: One each occurrence. Note: Use only when citing a carrier that operates vehicles with a GVWR less than 10,000 lbs
392.9a(a) / 13902	Severe Level I	Failing to register or maintain active operating authority (MC #) as a motor carrier. Number discovered: One for each trip discovered to not having authority

Last Updated: 07/13/2007

1.4.15.3 Household Goods - Part 370 - Principles and Practices for the Investigation and Voluntary Disposition of Loss and Damage Claims

[Investigative Procedures](#)
[CAPRI Procedures](#)

Investigative Procedures

What is FMCSA's jurisdiction in regards to household goods loss and damage claims filed with HHG motor carriers?

FMCSA's authority over loss and damage claims is limited to processing & handling of claims. FMCSA does not determine or decide loss and damage claims amounts.

What are the requirements for handling loss and damage claims?

49 C.F.R. Part 370 provides specific requirements and time limits for handling and investigating claims for loss or damage, injury, or delay to household goods by HHG motor carriers. Additionally, Part 370 requires loss and damage claims must be in writing and filed with the carrier in accordance with the terms and provisions described in its bill of lading or other contract of carriage, and all of its tariff provisions. Also, the claim requesting payment must be for a specified or determinable amount of money as provided by Section 370.3(b)

(3). 49 U.S.C. Section 14706(e) states, in part, that the minimum amount of time that carriers must allow for the filing of loss and damage claims is 9 months after the delivery of the household goods.

What procedures should I follow during my investigation of compliance with Part 370?

Your investigation of compliance with Part 370 should proceed as follows:

- Reviewing complaints contained in FMCSA's National Consumer Complaint Database which may indicate that consumers' loss and damage claims are not being handled or handled as required by Part 370**.
- Requesting the carrier's loss and damage claim files for ALL moves conducted during the past 12 months; (NOTE: Select the interstate moves conducted beyond the motor carrier's commercial zone);
- Reviewing the appropriate number of loss and damage claim records. See the sampling table in this Section; and Identify and cite violations and consider whether enforcement is appropriate.

**** DO NOT DISCLOSE THE IDENTITY OF COMPLAINANT(S), AS STATED IN PART 386.12(e)**

How many records should I review for the applicable time period?

- When reviewing HHG carrier records you should use the following table to sample and review an appropriate number of loss and damage claims records:

Number of loss and damage claims received by the carrier, subject to 370, in the previous 365 Days.

Number of Loss & Damage Claims Received	Number of Loss & Damage Claims to Review
1-5	All
6-25	5
26-50	8
51-90	13
91-150	20
151-280	32
281-400	50
401-500	68
501-1,200	80
1,201-3,200	125
3,201-10,000	200
10,001-35,000	315
35,001 or more	500

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Violations of Part 370 Regulations

CITATION	TYPE	DESCRIPTION
370.5(a)	General	Failing to acknowledge receipt of a written or electronic loss and damage claim within 30 days of receipt. Number discovered: One for each claim received and not acknowledged within 30 days.
370.5(b)	General	Failing to create a separate file and assign a successive claim file number for each claim received and/or notes that number on all documents filed in support of the claim. Number discovered: One for each claim received and not assigned a successive claim file # or claim # not noted on all documents.
370.7(a)	Severe Level II	Failing to promptly and thoroughly investigate each claim. Number discovered: One for each claim received and no action was taken to promptly and thoroughly investigate.
370.9(a)	Severe Level II	Failing to promptly and thoroughly investigate each claim within 120 days or within extension period. Number discovered: One for each claim not promptly and thoroughly investigated.
379.13	Severe Level II	Failing to retain loss and damage claim records for one year after settlement. Number discovered: One for each claim record not retained for one year after settlement.

1.4.15.4 Household Goods - Part 375

[Investigative Procedures](#)

[Reviewing Agent Agreements](#)

[Reviewing HHG Advertisements](#)

[Reviewing Tariffs](#)

[Reviewing Arbitration Program](#)

[Reviewing "Your Rights and Responsibilities When You Move" Pamphlet](#)

[Reviewing Complaints & Inquiry Handling Program](#)

[Reviewing Shipping Documents](#)
[Sampling](#)
[Reviewing Moving Estimates \(\\$\\$\)](#)
[Reviewing Orders for Service](#)
[HHG Inventory sheet](#)
[Review of Bills of Lading and Receipts](#)
[Weight](#)

CAPRI Procedures

Part 375 - Transportation of Household Goods In Interstate Commerce: Consumer Protection Regulations

■ *Part 375 - Household Goods Investigative Procedures*

What is FMCSA's jurisdiction in regards to for-hire transportation of household goods by motor carriers?

In 1999 Congress authorized FMCSA to regulate household goods carriers engaged in interstate operations in the Motor Carrier Safety Improvement Act of 1999. The Household Goods Consumer regulations are included in 49 C.F.R Part 375 of the Federal Motor Carrier Safety Regulations (FMCSRs) and the statutes are found in the ICC Termination Act. FMCSA is authorized to investigate interstate for-hire household motor carriers to ensure compliance and take enforcement when necessary.

What are the requirements for complying with 49 C.F.R. Part 375?

FMCSA requires that all motor carriers who transport household goods as a for-hire motor carrier in interstate commerce beyond the commercial zone are registered and have submitted the proper filings. HHG motor carriers who operate for-hire in interstate commerce (beyond their commercial zone) transporting household goods are subject to complying with Part 375 (i.e. providing and maintaining a tariff, estimates, order for service Orders for Services, bills of ladings, weight receipt, etc...)

■ *Reviewing Agent Agreements*

What are Agents and what are the requirements to having an Agent?

A HHG motor carrier is allowed to utilize the services of a Prime Agent and/or Emergency or Temporary Agent. These agents are permitted to perform services on behalf of the HHG motor carrier. The HHG motor carrier must obtain and maintain a written agreement with their Prime Agents. The agreement should be retained for at least 24 months following the date of termination of each agreement.

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Reviewing HHG Advertisements

What is an advertisement and what are the requirements?

An advertisement is any means of communication to the general public in connection with an offer or sale of any interstate household goods transportation services. This includes written or electronic database listings of the HHG carrier's name, address and telephone number on Internet websites. This excludes listings of the carrier's name, address and telephone number in a telephone directory or similar publication. Listings in telephone directories (i.e. Yellow Pages, Donnelly Directories, Yellow Book, etc.) are not considered an advertisement if it only identifies the carrier's name, address and telephone number.

Section 375.207(b) requires all HHG motor carriers, and their agents, to include, in every advertisement:

- The name or trade name of the HHG motor carrier under whose operating authority the advertised service will originate; and
- The USDOT number assigned by the Federal Motor Carrier Safety Administration.

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What procedures should I follow if I determine a HHG motor carrier's advertisements do not comply with the requirements as outlined in Part

375.207?

You should cite the HHG motor carrier for:

- **Section 375.207(a)** - Providing false, misleading or deceptive information in advertisements. (Severe Level I violation)
- **Section 375.207(b)(1-2)** (naming the appropriate section) - Failing to include and not require agents to include in all advertisements for all services required information.

Collecting Transportation Charges

Reviewing Tariffs

What regulations apply to tariffs?

The USDOT Surface Transportation Board (STB) has general jurisdiction of tariff requirements. Section 1310.2(a) requires that tariffs be arranged in a way that allows for the determination of the exact rate(s) and service terms applicable to shipments transported by the HHG motor carrier.

Note: If during your investigation, you discover that the carrier's tariff is not in full compliance of Section 1310.2(a) (found in MCREGIS), you should consult with your supervisor who should determine if further review of the carrier's tariff by the STB is necessary.

Why is not having a tariff a significant violation?

The tariff is the HHG motor carrier's legal basis for the charges it assesses for transporting and handling HHG shipments. If the HHG carrier does not have a tariff in effect, it has no legal basis for collecting its transportation related charges. 49 U.S.C. Section 14903(a) provides for a civil penalty of not more than \$100,000.00 per violation and possible criminal action for failing to have a tariff and/or not assessing charges as provided in the HHG motor carrier's tariff.

Note: Request and review a copy of the carrier's tariff – if they have published their own tariff. If the carrier is a member of the American Moving & Storage Administration (AMSA), verify with AMSA the carrier's tariff participation, including the filing of all of the required exceptions (binding estimates, insurance, credit cards, etc.). If a carrier can only produce an electronic copy of their tariff, they must provide the software to the Investigator. AMSA can be reached at (703) 683-7410.

What areas should be reviewed when confirming tariff compliance?

FMCSA's primary concern in regards to the HHG tariff compliance is to determine if:

- All charges for transportation and other services are included in the HHG motor carrier's tariff. Other service charges could include provisions: for accepting credit cards; selling additional insurance coverage for loss and damage to the shippers household goods; and the charges for accessorial items and services such as packing and unpacking materials; (Carriers also must identify whether or not they would provide binding estimates in accordance with 375.403) and

- The tariff can be based upon weight, mileage, hourly rate or volume (e.g., cubic feet), providing it's identified in the carrier's tariff. If the tariff is based on cubic feet, there should be a conversion table for determining the volume of the various household goods items.

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What procedure should I follow if I discover the HHG motor carrier has no tariff?

You should cite the HHG motor carrier for:

- **49 USC Section 13702(a)** - Charging a rate not contained in a tariff (Severe Level I);
or

What procedure should I follow if I discover the HHG motor carrier who fails to charge its applicable tariff rate?

You should cite the HHG motor carrier for:

- **Section 375.215** - Failing to charge applicable tariff rate (Severe Level I violation - recommended enforcement if charges were above the tariff rates).

What procedure should I follow if I discover the HHG motor carrier's tariff is not in compliance (form & manner)?

You should cite the HHG motor carrier for:

- **Section 13702(a)(2)** - Charging a rate not contained in a tariff.
- **Section 13702(a)(2)(A-C)** - Failing to provide the minimum required contents in your tariff as prescribed. (Severe Level II violation)
- **Section 375.221(a)** - Failing to identify a reference in the tariff for the acceptance of charge or credit cards for payment. (Use when charge or credit cards are not referenced in the tariff as an acceptable method of payment and it was discovered that charge and/or credit cards were accepted) (Severe Level II violation)
- **Section 375.221(d)** - Failing to identify in the tariff the charge or credit card plans you participate in. (Use when charge or credit cards are identified as an acceptable method of payment – but the plan is not described and it was discovered that charge and/or credit cards were accepted) (Severe Level II violation)
- **Section 375.303(c)** - Failing to furnish proof of insurance coverage. (Severe Level II violation)
- **Section 375.303(c)(6)** - Failing to provide a provision in the tariff for selling, offering to sell, or procuring liability insurance coverage.

Reviewing Arbitration Program

What is arbitration and why must a HHG motor carrier participate in a dispute

settlement program (arbitration)?

- As a condition for registration HHG motor carriers are required by Section 375.211 to offer arbitration as a means of settling claims for damage or loss to the household goods transported.
- Prior to transporting a HHG shipment, the HHG carrier must provide shippers with information advising of the availability of neutral arbitration, including:
 - A concise easy to read, accurate summary of the arbitration procedures,
 - Any applicable costs, and
 - A disclosure of the legal effects if they elect to use arbitration.
- The arbitration that is offered cannot provide any special advantage to the HHG motor carrier when shippers that reside at a place distant from the carrier's principal place-of-business file claims.
- The HHG carrier must promptly provide shippers with the necessary arbitration forms and information upon request.
- The arbitrator must be independent of the parties in the dispute and capable of resolving disputes fairly and expeditiously.
- Shippers cannot be required to pay more than 50% of the charges for initiating an arbitration proceeding.
- The carrier cannot require a shipper to agree to use arbitration prior to the time that a dispute arises.
- The arbitrator must provide a decision in a dispute within 60 days.

What procedures should I follow if I discover a HHG motor carrier does not comply with the arbitration program?

You should cite the motor carrier for:

- **Section 375.211(a)**- Failing to participate in an arbitration program- (Severe Level I)
- **Section 375.211(a)(1-11)** (naming the appropriate section) - Using an arbitration program that does not meet the requirements of Section 375.211 (Severe Level II violation).
- **Section 375.211(b)** - Failing to produce a concise easy to read, accurate summary of your arbitration program. (Severe Level II violation)
- **Section 375.213(a)(4)** - Failing to provide its shippers with a concise, easy to read, accurate summary of your arbitration program. (Severe Level II violation)

Reviewing "Your Rights and Responsibilities When You Move" Pamphlet**What is the pamphlet "Your Rights and Responsibilities When You Move" and what are the requirements?**

All motor carriers are required to publish the booklet "Your Rights and Responsibilities When You Move" as it appears in Appendix A of Part 375 as required by Section 375.213(b).

Prior to the execution of an Orders for Service for a shipment of household goods, Section 375.213(a)(1) requires all HHG motor carriers to provide prospective shippers with a copy of the booklet, *Your Rights and Responsibilities When You Move*.

What procedures should I follow if I discover a HHG motor carrier does not comply with the requirements of the booklet "Your Rights & Responsibilities When You Move"?

You should cite the motor carrier for:

- **Section 375.213(b)** - Failing to produce the booklet "Your Rights and Responsibilities When You Move" (Severe Level I violation).
- **Section 375.213(b)(1-3)** (naming the appropriate section) - Failing to produce the booklet "Your Rights and Responsibilities When You Move" that meets the requirements of Section 375.213(b)(1-3).
- **Section 375.213(a)(1)** - Failing to provide shippers with the booklet "Your Rights and Responsibilities When You Move". (Severe Level II violation)

NOTE: The State version of the moving pamphlet is not acceptable neither is a reference to the Internet (including the carrier's website and FMCSA's website).

Reviewing Complaints & Inquiry Handling Program

What is a complaint & inquiry handling program and what are the requirements?

Section 375.209 requires that HHG carriers establish and maintain procedures for responding to complaints and inquiries from individual shippers. A clear and concise written description of the procedures must be distributed to each shipper. The procedures must include all four of the following items:

- A communications system allowing individual shippers to communicate with the principal place of business by telephone.
- A telephone number.
- A clear and concise statement about who must pay for complaint and inquiry telephone calls.
- A written or electronic record system for recording all inquiries and complaints received from an individual shipper by any means of communications.

What procedures should I follow if I discover a HHG motor carrier does not comply with the complaint & inquiry-handling program?

You should cite the motor carrier for:

- **Section 375.209(a)** - Failing to establish a complaint & inquiry-handling program
- **Section 375.209(b)(1-4)** (naming the appropriate section) - Producing a summary of your complaint & inquiry-handling program that does not meet the requirements of Section 375.209(b)(1-4)
- **Section 375.209(c)** - Failing to produce a concise easy to read, accurate summary of your complaint & inquiry-handling program.
- **Section 375.213(a)(5)** - Failing to provide shippers with a concise, easy to read, accurate summary of your complaint & inquiry-handling program

Reviewing Shipping Documents

What types of transportation documents should I request and review to determine compliance with Part 375?

You should request trip records that include:

- Estimates,
- Orders for Service,
- Inventories
- Bills of lading,
- Weight tickets (if charges are based on weight), and
- Freight invoice payment records, including copies of checks and credit card slips contained in the individual trip records. Bills of lading can also be checked to determine if they contain notations of cash payments received.

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 ***Reviewing Moving Estimates (\$\$)***

What is an estimate and what are the requirements?

Estimates describe the shipment and all services to be provided. It describes the approximate charges the shipper would be expected to pay. HHG motor carriers are required to estimate the total charges for each shipment transported. HHG motor carriers are also required to provide a copy of the written estimate of the total charges to each shipper. Estimates must be retained for each move performed for at least one year from the date of the estimate was prepared and kept as an attachment to be made an integral part of the bill of lading contract.

What types of estimates are HHG motor carriers allowed to offer shippers?

Section 375.401(a) allows HHG carriers to provide one of two types of estimates to prospective shippers:

- **Binding** - the mover guarantees the price for all agreed upon transportation and transportation related services prior to the move; (“Guarantee” “Not to Exceed” “Flat Rate” estimates are not binding estimates) or
- **Non-binding** - the mover provides a reasonably accurate estimated price based on weight or volume and any accessorial services required (as prescribed in the carrier’s tariff).

Note: Section 375.403 describes the requirements for providing binding estimates.

Section 375.405 describes the requirements for providing non-binding estimates.

How do I determine if a HHG motor carrier's estimates comply with the requirements of Section 375.401, 375.403 & 375.405?

You should review the written estimates associated with each shipment reviewed during the compliance review.

What procedures should I follow if I determine that a HHG carrier does not comply with the binding estimate requirements?

You should cite the HHG motor carrier for:

- **Section 375.401(a)(1)** - Failing to prepare a written binding estimate for each move performed. (Severe Level II violation)
- **Section 375.401(b)** - Failing to specify on the binding and/or non-binding estimate, the form of payment you and your agent will honor at delivery. (Severe Level II violation)
- **Section 375.401(d)** - Failing to provide an individual shipper with a written explanation of the formula used to calculate the conversion of a volume based estimate to weight.
- **Section 375.401(f)** - Failing to ensure a company representative and shipper sign the estimate of charges. (NOTE: Estimates provided via the Internet must be signed) (Severe Level II violation)
- **Section 375.403(a)(1-9)** (noting the appropriate sections) - Failing to prepare a binding estimate in the form and manner prescribed. Note: DO NOT USE THIS CITE FOR 375.403(a)(5); 375.403(a)(6) or 375.403(a)(9)
- **Section 375.403(a)(5)** - Failing to reaffirm or negotiate the written binding estimate listing the additional household good or services. (Severe Level I violation)
- **Section 375.403(a)(6)** - Collecting more than the original amount of the binding estimate. (Severe Level I violation)
- **Section 375.403(c)** - Failing to retain a copy of the binding estimate for each move performed for one year from the date the estimate was prepared, as an integral part of

the bill of lading. (Severe Level II violation)

For Hostage Load Violations:

- **Section 375.403(a)(9)** - Failing to relinquish possession of a household goods shipment if the shipper offers to pay the original binding estimated price. (Severe Level I violation)

What procedures should I follow if I determine that a HHG carrier does not comply with the non-binding estimate requirements?

You should cite the HHG motor carrier for:

- **Section 375.401(a)(2)** - Failing to prepare a written non-binding estimate for each move performed. (Severe Level II violation)
- **Section 375.401(b)** - Failing to specify on the binding and/or non-binding estimate, the form of payment you and your agent will honor at delivery. (Severe Level II violation)
- **Section 375.401(d)** - Failing to provide an individual shipper with a written explanation of the formula used to calculate the conversion of a volume based estimate to weight.
- **Section 375.401(f)** - Failing to ensure a company representative and shipper sign the estimate of charges.
- **Section 375.405(d)** - Failing to retain a copy of the non-binding estimate for each move performed for one year from the date the estimate was prepared, as an integral part of the bill of lading. ((Severe Level II violation)
- **Section 375.405(b)(1-10)** (noting the appropriate sections) - Failing to prepare the non-binding estimate in the form and manner prescribed. Note: DO NOT USE THIS CITE FOR 375.405(b)(7) or 375.405(b)(8)
- **Section 375.405(b)(7)** - Failing to reaffirm or negotiate the written non-binding estimate listing the additional household goods or services. (Severe Level I violation)
- **Section 375.405(b)(8)** - Collecting more than 110 percent of the original non-binding estimate at destination. (Severe Level I violation)
- **Section 375.405(c)** - Failing to enter estimated charges on Orders for Service and bill of lading.

For Hostage Load Violations:

- **Section 375.407(a)** - Failing to relinquish possession of a household goods shipment if the shipper pays at least 110 percent of the approximate costs of a non-binding estimate. (Severe Level I violation)
- **Section 375.407(b)** - Failing to relinquish possession of a household goods shipment if the shipper offers to pay the original non-binding estimated price. (Severe Level I violation)

 ***Reviewing Orders for Service***

What is an Orders for Service and what are the requirements?

The Service Orders for Service shows all of the services that will be performed by the HHG motor carrier and should contain minimum information as provided by Section 375.501(a).

Prior to transporting a shipment of household goods, Section 375.501 requires every HHG carrier to prepare a written Orders for Service.

The HHG motor carrier must provide a signed and dated copy of the order for service. A copy of the Orders for Service must be retained for one year as an integral part of the bill of lading. The carrier has an option of entering the valuation statement on the Orders for Service or the bill of lading.

Note: Addendum's to the Orders for Service are not acceptable.

What procedures should I follow if I determine that a HHG carrier does not comply with the order for Service Orders for Service requirements?

You should cite the HHG motor carrier for:

- **Section 375.501(a)** - Failing to prepare a written Orders for Service for each move performed. (Severe Level II violation)
- **Section 375.501(a)(1-15)** (noting the appropriate sections) - Failing to prepare the Orders for Service in the form and manner prescribed.
- **Section 375.501(c)** - Failing to ensure a company representative and shipper date & sign the Orders for Service.
- **Section 375.501(f)** - Failing to amend Orders for Service, and upon mutual agreement with the individual shipper, prior to loading shipment. (Severe Level II violation)
- **Section 375.501(g)** - Failing to retain a copy of the Orders for Service for each move performed for one year from the date the Orders for Service was prepared, as an integral part of the bill of lading. (Severe Level II violation)
- **Section 375.501(h)** - Failing to place the valuation statement on the Orders for Service if not entered in the bill of lading. Note: Placing the improper valuation statement on the bill of lading or Orders for Service is considered not placing a statement at all.

 ***HHG Inventory sheet******What is a HHG inventory sheet and what are the requirements?***

An inventory sheet is a detail listing of all of the shipper's household goods that will be or have been transported by the HHG motor carrier. The inventory shows the condition of the household goods at time of pick-up and delivery. Section 375.503(a) requires that all HHG motor carriers prepare a written, itemized inventory for each shipment of household goods it transports. Inventories must be signed at origin and retained for one year from the date it was prepared as an integral part of the bill of lading

What procedures should I follow if I determine that a HHG motor carrier does not comply with the requirements of an inventory as outlined in Part 375.503?

You should cite the HHG motor carrier for:

- **Section 375.503(a)** - Failing to prepare a written inventory for each shipment of household goods transported. (Severe Level II violation)
- **Section 375.503(a)** - Failing to prepare an inventory in the form and manner prescribed
- **Section 375.503(c)** – Failing to ensure a company representative and shipper sign an inventory.
- **Section 375.503(e)** - Failing to retain a copy of an inventory for each move performed for one year from the date the inventory was prepared, as an integral part of the bill of lading. (Severe Level II violation)

What procedures should I follow if I determine that a HHG motor carrier does not prepare an inventory with the required information?

You should identify the specific information that is missing and reference the specific part contained in Section 375.503(a) - Failing to prepare an inventory in the form and manner prescribed. (Record keeping violation)

What procedures should I follow if I determine that a HHG motor carrier does not retain copies of written inventories as required?

You should cite the HHG motor carrier for Section 375.503(e) - Failing to retain written copies of inventories as required. (Record keeping violations)

Review of Bills of Lading and Receipts

What is a bill of lading and what are the requirements?

Section 375.505(a) requires every HHG motor carrier to prepare a bill of lading for each HHG shipment it transports. The bill of lading is the contract for services between the HHG motor carrier and shipper. A copy of the bill of lading must be given to the shipper before loading the shipment. The bill of lading must include minimum information as provided by Section 375.505(b). The bill of lading must accompany the shipment at all times. A copy of the bill of lading must be retained for one year from the date it's created for each move performed. In addition, the valuation statement must be entered on the bill of lading, if it's not entered on the Orders for Service.

Note: Refer to the [Tariff](#), [Orders for Service](#), and [Bill of Lading](#) sections.

What procedures should I follow if I determine that a HHG motor carrier does not comply with the requirements of a bill of lading as outlined in Part 375.505?

You should cite the HHG motor carrier for:

- **Section 375.505(a)** - Failing to prepare a bill of lading for each move performed.

(Severe Level II violation)

- **Section 375.505(b)(1-14)** (note the appropriate sections) - Failing to prepare a bill of lading in the form and manner prescribed (Severe Level II violation)
- **Section 375.505(c)** - Failing to ensure the bill of lading accompany the shipment at all times (to be cited mainly during roadside inspection)
- **Section 375.505(d)** - Failing to retain a copy of a bill of lading for each move performed for one year from the date it's created. (Severe Level II violation)
- **Section 375.505(e)** - Failing to place the valuation statement on the bill of lading if not entered in the Orders for Service. Note: Entering the improper valuation statement on the bill of lading or Orders for Service is considered not placing a statement at all.

Reviewing Weighing of the Shipment

What is weighing the shipment and what are the requirements?

Every HHG motor carrier transporting household goods on a non-binding estimate shall determine the weight of each shipment transported prior to the assessment of any charges dependent on the shipment weight as provided by Section 375.507(a). Section 375.509 provides the methods for weighing a HHG shipment and the minimum information required to be included on the weight ticket. Generally, the weight shall be obtained on a scale meeting the definition of a certified scale as provided in Section 375.103. Carrier must not refuse to allow shippers to view the original weigh or re-weigh of their shipment. If a shipper elects not to observe a weighing, it's presumed they have waived that right. If a shipper elects not to observe the re-weighing of their shipment, the shipper must waive that right in writing. The carrier must obtain a separate weight ticket for each weighing, unless both weighings are performed on the same scale. The original weight tickets must be retained for each shipment weighed as part of the file.

What procedures should I follow if I determine that a HHG motor carrier does not comply with the weighing the shipment requirements as outlined in Part 375.507?

You should cite the HHG motor carrier for:

- **Section 375.507(a)** - Failing to weigh a shipment for each move transported on a non-binding estimate. (Severe Level I violation)
- **Section 375.507(b)** - Failing to weigh shipments on a certified scale. (Severe Level I violation).
- **Section 375.513** - Refusing to allow shippers to view the re-weigh of their shipment (Severe Level I violation)
- **Section 375.515(b)** - Failing to obtain a written waiver from shippers who waive their right to observe the re-weighing of their shipment. (Severe Level II violation)
- **Section 375.519(a)(1-6)** (note the appropriate section) - Failing to prepare a weight ticket in the form and manner prescribed (Severe Level I violation)

- **Section 375.519(b)** - Failing to obtain a separate weight ticket for each weighing, if not in accordance with Part 375.519(b). (Severe Level I violation)
- **Section 375.519(c)** - Failing to retain the original copy of the weight tickets for each shipment weighed as part of the file. (Severe Level I violation)
- **Section 375.519(d)** - Making, or causing to make fraudulent or intentionally false weight tickets and/or reproducing fraudulent weight tickets. Part 390.35 should be entered as secondary (Severe Level I violation). Note: If this violation is discovered, consult with your supervisor about contacting the Office of Inspector General (OIG).

CAPRI Procedures

Once you have completed your investigation of Section 375, you should ask yourself, "Can I prove each discovered violation in Section 375?" If you can answer "Yes" to this question, the following guidelines have been established to assist in completing Part-B Violations Tab of the CAPRI Software:

How do I record the violations of Part 375 regulations?

You should record the number checked as follows:

Violations of Part 375 Regulations

CITATION	TYPE	DESCRIPTION
375.205(b)	General	Failing to have a written and signed agency agreement in effect with your Prime Agent(s). Number discovered: One for each agency agreement required.
375.20(c)	General	Failing to retain a copy of the written agreement between you and your Prime Agent for at least 24 months following the date of termination of each agreement Number discovered: One for each agency agreement not retained on file at the carrier's principal place of business.
375.207(a)	Severe Level I	Providing false, misleading, or deceptive information in advertisements. Number checked: One violation for each advertisement in violation.
375.207(b)(1-2)	General	Failing to include and not require agents to include in all advertisements for all services required information. Number discovered: One for each advertisement that does not include the prescribed information.
375.209(a)	General	Failing to have a complaint & inquiry-handling program.

		Number discovered: One program (one of one)
375.209(b)(1-4)	General	Producing a summary of your complaint & inquiry-handling program that does not meet the requirements of Section 375.209(b)(1-4) Number discovered: One program summary. (one of one) Describe the required contents not provided.
375.209(c)	General	Failing to produce a concise easy to read, accurate summary of your complaint & inquiry-handling program. Number discovered: One program summary not produced (one of one).
375.213(a)(5)	General	Failing to provide shippers with a concise easy to read, accurate summary of your complaint & inquiry-handling program. Number discovered: One for each program summary not provided to shippers.
13702(a)	Severe Level I	Charging a rate not contained in a tariff. Number discovered: One for each shipment transported without a tariff.
375.215	Severe Level I	Failing to charge applicable tariff rate. Number discovered: One for each shipment using a rate not contained in tariff.
13702(a)(2) (A-C)	Severe Level II	Failing to provide the required minimum contents in your tariff as prescribed. Number discovered: One tariff. (one of one) Describe the required contents not provided.
375.221(a)	General	Failing to identify a reference in the tariff for the acceptance of charge or credit cards for payment. Number discovered: One tariff reference (one of one) Note: Use when charge or credit cards are not referenced in the tariff as an acceptable method of payment and it was discovered that charge and/or credit cards were accepted
375.221(d)	General	Failing to identify in the tariff the charge or credit card plans you participate in. Number discovered: One tariff reference (one of one) Note: Use when charge or credit cards are identified as an acceptable method of payment – but the plan is not described and it was discovered that charge and/or credit cards were accepted
375.303(c)	Severe Level II	Failing to furnish proof of insurance coverage.

		Number discovered: One for each instance in which the HHG carrier sold excess loss and damage insurance and failed to provide the shipper with a policy or other evidence.
375.303(c)(6)	General	Failing to provide a provision in the tariff for selling, offering to sell, or procuring liability insurance coverage. Number discovered: One tariff reference. (one of one)
375.211(a)	Severe Level I	Failing to participate in an arbitration program. Number discovered: One program. (one of one).
375.211(a)(1-11)	Severe Level II	Using an arbitration program that does not meet the requirements of Section 375.211 Number discovered: One program. (one of one) Describe the requirements not in compliance.
375.211(b)	Severe Level II	Failing to produce a concise easy to read, accurate summary of your arbitration program. Number discovered: One program summary. (one of one)
375.213(a)(4)	Severe Level II	Failing to provide its shippers with a concise easy to read, accurate summary of your arbitration program Number discovered: One for each program summary not provided.
375.213(b)	Severe Level II	Failing to produce the booklet "Your Rights and Responsibilities When You Move" Number discovered: One booklet. (one of one).
375.213(b)(1-3)	Severe Level II	Failing to produce the booklet "Your Rights and Responsibilities When You Move" that meets the requirements of Section 375.213(b)(1-3). Number discovered: One booklet. (one of one) Describe the required contents not provided.
375.213(a)(1)	Severe Level II	Failing to provide shippers with the booklet "Your Rights and Responsibilities When You Move". Number discovered: One for each shipment discovered where the carrier did not give the shipper the required booklet.
375.401(a)(1)	Severe Level II	Failing to prepare a written binding estimate for each move performed. Number discovered: One for each shipment discovered where the carrier did not prepare a written

		binding estimate.
375.401(b)	Severe Level II	Failing to specify on the binding and/or non-binding estimate, the form of payment you and your agent will honor at delivery. Number discovered: One for each estimate not specifying the form of payment honored.
375.401(d)	General	Failing to provide an individual shipper with a written explanation of the formula used to calculate the conversion of a volume based estimate to weight. Number discovered: One for each shipment estimated based on volume and then converted to weight.
375.401(f)	Severe Level II	Failing to ensure a company representative and shipper sign the estimate of charges. Number discovered: One for each binding estimate not signed by the company representative and/or shipper. Note: Estimates provided via the Internet must be signed
375.403(a)(1-9)	General	Failing to prepare a binding estimate in the form and manner prescribed. Number discovered: One for each shipment found where the written binding estimate does not contain the prescribed information. Note: DO NOT USE THIS CITE FOR 375.403(a)(5); 375.403(a)(6) or 375.403(a)(9)
375.403(a)(5)	Severe Level I	Failing to reaffirm or negotiate the written binding estimate listing the additional household good or services. Number discovered: One for each shipment found where the written binding estimate was not reaffirmed or negotiated.
375.403(a)(6)	Severe Level I	Collecting more than the original amount of the binding estimate. Number discovered: One for each shipment found where the carrier collected more than the original binding estimate amount.
375.403(a)(9)	Severe Level I	Section 375.403(a)(9) – Failing to relinquish possession of a household goods shipment if the shipper offers to pay the original binding estimated price. Number discovered: One for each shipment not relinquished. Note: USE FOR HOSTAGE LOADS DISCOVERED
375.403(c)	Severe Level II	Failing to retain a copy of the binding estimate for each

		<p>move performed for one year from the date the estimate was prepared, as an integral part of the bill of lading.</p> <p>Number discovered: One for each shipment binding estimate was not retained.</p>
375.401(a)(2)	Severe Level II	<p>Failing to prepare a written non-binding estimate for each move performed.</p> <p>Number discovered: One for each non-binding estimate not prepared.</p>
375.401(f)	General	<p>Failing to ensure a company representative and shipper sign the estimate of charges.</p> <p>Number discovered: One for each non-binding estimate not signed.</p>
375.405(b)(1-10)	General	<p>Failing to prepare the non-binding estimate in the form and manner prescribed.</p> <p>Number discovered: One for each shipment found where the written non-binding estimate does not contain the prescribed information. Note: DO NOT USE THIS CITE FOR 375.405(b)(7) or 375.405(b)(8)</p>
375.405(b)(7)	Severe Level I	<p>Failing to reaffirm or negotiate the written non-binding estimate listing the additional household good or services.</p> <p>Number discovered: One for each shipment found where the written non-binding estimate was not reaffirmed or negotiated.</p>
375.405(b)(8)	Severe Level I	<p>Collecting more than 110 percent of the original non-binding estimate at destination.</p> <p>Number discovered: One for each shipment found where carrier required payment in excess of 110% of original estimate before delivery of HHG. Note: DO NOT USE FOR HOSTAGE LOADS</p>
375.405(c)	General	<p>Failing to enter estimated charges on Orders for Service and bill of lading.</p> <p>Number discovered: One fore each estimated amount not entered on the Orders for Service and bill of lading.</p>
375.405(d)	Severe Level II	<p>Failing to retain a copy of the non-binding estimate for each move performed for one year from the date the estimate was prepared, as an integral part of the bill of lading.</p> <p>Number discovered: One for each non-binding estimate not retained for one year.</p>

375.407(a)	Severe Level I	<p>Failing to relinquish possession of a household goods shipment if the shipper pays at least 110 percent of the approximate costs of a non-binding estimate.</p> <p>Number discovered: One for each shipment found where carrier did not relinquish the HHG after shipper paid 110% of non-binding estimate. Note: USE FOR HOSTAGE LOADS DISCOVERED</p>
375.407(b)	Severe Level I	<p>Failing to relinquish possession of a household goods shipment if the shipper offers to pay the original non-binding estimated price.</p> <p>Number discovered: One for each shipment found where carrier did not relinquish the HHG after shipper offered to pay 110% of non-binding estimate. Note: USE FOR HOSTAGE LOADS DISCOVERED</p>
375.501(a)	Severe Level II	<p>Failing to prepare a written Orders for Service for each move performed</p> <p>Number discovered: One for each Orders for Service not prepared.</p>
375.501(a)(1-15)	General	<p>Failing to prepare an Orders for Service in the form and manner prescribed.</p> <p>Number discovered: One for each Orders for Service that does not contain the required information.</p>
375.501(c)	General	<p>Failing to ensure a company representative and shipper date & sign the Orders for Service.</p> <p>Number discovered: One for each Orders for Service not signed.</p>
375.501(f)	Severe Level II	<p>Failing to amend Orders for Service, and upon mutual agreement with the individual shipper, prior to loading shipment.</p> <p>Number discovered: One for each Orders for Service not amended.</p>
375.501(g)	Severe Level II	<p>Failing to retain a copy of the Orders for Service for each move performed for one year from the date the Orders for Service was prepared, as an integral part of the bill of lading.</p> <p>Number discovered: One for each Orders for Service not retained.</p>
375.501(h)	General	<p>Failing to place the valuation statement on the Orders for Service if not entered in the bill of lading.</p> <p>Number discovered: One for each Orders for Service the valuation statement is not entered if not entered in</p>

		<p>the bill of lading. Note: Entering the improper valuation statement on the bill of lading or Orders for Service is considered not placing a statement at all.</p>
375.503(a)	Severe Level II	<p>Failing to prepare a written inventory for each shipment of household goods transported.</p> <p>Number discovered: One for each shipment reviewed that does not include a written inventory.</p>
375.503(b)	General	<p>Failing to prepare an inventory in the form and manner prescribed.</p> <p>Number discovered: One for each inventory reviewed that does not include the required information.</p>
375.503(c)	General	<p>Failing to ensure a company representative and shipper sign an inventory.</p> <p>Number discovered: One for each inventory not signed.</p>
375.503(e)	Severe Level II	<p>Failing to retain a copy of an inventory for each move performed for one year from the date the inventory was prepared, as an integral part of the bill of lading.</p> <p>Number discovered: One for each inventory not retained.</p>
375.505(a)	Severe Level II	<p>Failing to prepare a bill of lading for each move performed.</p> <p>Number discovered: One for each shipment in which the carrier did not provide the shipper with a bill of lading.</p>
375.505(b)(1-14)	Severe Level II	<p>Failing to prepare a bill of lading in the form and manner prescribed.</p> <p>Number discovered: One for each shipment in which the bill of lading does not include the required information.</p>
375.505(c)	General	<p>Failing to ensure the bill of lading accompany the shipment at all times.</p> <p>Number discovered: One for bill of lading not accompanying each shipment. Note: To be cited mainly during roadside inspections</p>
375.505(d)	General	<p>Failing to retain a copy of a bill of lading for each move performed for one year from the date it's created.</p> <p>Number discovered: One for each receipt or bill of lading not retained.</p>
375.505(e)	General	<p>Failing to place the valuation statement on the bill of lading</p>

		<p>if not entered in the Orders for Service.</p> <p>Number discovered: One for each bill of lading the valuation statement is not entered if not entered in the Orders for Service.</p> <p>Note: Entering the improper valuation statement on the bill of lading or Orders for Service is considered not placing a statement at all.</p>
375.507(a)	Severe Level I	<p>Failing to weigh a shipment for each move transported on a non-binding estimate.</p> <p>Number discovered: One for each shipment required to be weighed.</p>
375.513	Severe Level I	<p>Refusing to allow shippers to view the re-weigh of their shipment.</p> <p>Number discovered: One for each shipment a shipper was not allowed to view the re-weigh.</p>
375.515(b)	Severe Level II	<p>Failing to obtain a written waiver from shippers who waive their right to observe the re-weighing of their shipment.</p> <p>Number discovered: One for each shipment a waiver for observing a re-weigh was not obtained from a shipper.</p>
375.519(a)(1-6)	Severe Level I	<p>Failing to prepare a weight ticket in the form and manner prescribed.</p> <p>Number discovered: One for each weight ticket not prepared in the form and manner prescribed.</p>
375.519(a)	Severe Level II	<p>Failing to obtain a separate weight ticket for each weighing, if not in accordance with Part 375.519(b).</p> <p>Number discovered: One for each separate weight ticket not obtained when required.</p>
375.519(c)	Severe Level I	<p>Failing to retain the original copy of the weight tickets for each shipment weighed as part of the file.</p> <p>Number discovered: One for each original weight ticket not retained.</p>
375.519(d) / 390.35	Severe Level I	<p>Making, or causing to make fraudulent or intentionally false weight tickets and/or reproducing fraudulent weight tickets.</p> <p>Number discovered: One for each weight ticket falsified.</p> <p>Note: If this violation is discovered, consult with your supervisor about contacting OIG.</p>
375.603	Non-record	<p>Failing to tender a shipment in the prescribed manner.</p>

	keeping	Number discovered: One violation for each shipment found where the carrier did not identify the information, regarding where the shipper's HHGs are stored as required by this section.
375.605(a)	Non-record keeping	Failing to notify shipper or other representative responsible for payment of time that delayed shipment can be picked up or delivered. Number discovered: One for each delayed shipment found and in which the shipper or other representative were not advised of the time that a delayed shipment can be picked up or delivered.
375.701	Non-record keeping	Requiring shippers to sign documents containing language purporting to release the carrier or its agents from liability. Number discovered: One for each document, bill of lading, Orders for Service, inventory sheet, the carrier has required the shipper to sign and found in violation.
375.705	Severe	Requiring payment of all freight charges prior to delivery of all split or divided shipments. Number checked: One for each instance in which the shipper was required to pay for non-delivered portions of HHGs in advance.
375.709(a)	Severe	Collecting freight charges when shipment is totally destroyed or lost in transit. Number checked: One for each shipment totally lost and destroyed while in transit and the carrier collected its transportation charges.

1.4.15.5 House Hold Goods - Recommendations

What recommendations should be made for HHG compliance review findings?

If at the conclusion of a compliance review it appears that a HHG carrier is not in compliance with the HHG commercial regulations, you should also prepare and review recommendations for compliance on the Part B - Recommendations section of the CR.

The recommendations should be tailored to the HHG motor carrier's specific compliance problems. The standard recommendations used in the CAPRI software can be used as a starting point with more detailed and specific recommendations added. The recommendations should identify at least the minimum areas needing improvement and state that it is only intended as a tool to assist the motor carrier in improving its commercial compliance.

You should request an opportunity to discuss the potential problems with the highest-ranking

official of the motor carrier (sole proprietor, partner or corporate officer). The official should be asked to sign and date the compliance review, to receive a copy. You should keep signed copies of all documents.

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Civil Penalty Amounts

How do I determine the appropriate civil penalty amounts for violations of the FMCCRS and The ICCTA?

- If the appropriate UFA software is not available, you should manually prepare a Civil Penalty Worksheet to determine the appropriate civil penalties. You shall consider the following factors when considering civil penalties for a HHG motor carrier:
 - Culpability;
 - History of prior conduct;
 - Degree of harm to shipper(s);
 - Ability to pay/stay in business
 - Whether shipper has been adequately compensated before institution of enforcement proceeding;
 - Subject's attitude towards compliance & willingness/ability to comply; and
 - Such other matters as fairness may require.
- Violations of The FMCCRS and The ICCTA carry a minimum civil penalty of not less than \$1,000 for each violation and each day the violation occurs as provided by Appendix B to Part 386, subsection (g).

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1.4.15.7 Illustration HHG-1

EXHIBIT ABSTRACT

EXHIBIT NUMBER 1

SUBJECT: ABC Moving & Storage Inc.

CASE NUMBER: SS-XXXX-000-US0000

SECTION NUMBER: 49 C.F.R. Section 375.211(a)

DESCRIPTION: Failing to participate in an arbitration program for the handling of loss and damage claims.

REMARKS: (This section should contain the elements of proof)

On or about June 15, 20XX, ABC Moving & Storage, Inc., picked up for transport household goods on behalf of shipper Susan Harpsichord from New Haven, CT to Phoenix, AZ while failing to participate in an arbitration program. Ms. Harpsichord filed a loss and damage claim with ABC Moving & Storage, Inc. on August 31, 20XX. The carrier refused the shipper's written request to use an arbitration program on October 1, 20XX. The carrier's written response stated ABC Moving & Storage, Inc. did not participate in an arbitration program.

DOCUMENTS

Copies of ABC Moving & Storage, Inc.'s signed documents show ABC Moving & Storage, Inc. transported Susan Harpsichord's household goods for-hire from New Haven, CT to Phoenix, AZ on June 15, 20XX, documents include:

- a. Written Estimate, dated May 1, 20XX;
 - b. Order For Service, dated May 1, 20XX;
 - c. Bill of Lading, dated June 15, 20XX; and
 - d. Inventory Sheet, dated June 15 and July 1, 20XX.
2. Copy of ABC Moving & Storage, Inc.'s invoice, dated July 1, 20XX, which shows Susan Harpsichord, shipper, paid \$3,500 for the transportation and accessorial charges at the time of delivery of her household goods in Phoenix, Arizona.
3. Copy of Susan Harpsichord's written loss and damage claim, dated August 31, 20XX. This claim shows Ms. Harpsichord claimed \$1,000 for loss and damages that occurred to her household goods. This loss and damage claim shows ABC Moving & Storage, claim number is XXXXXX.
4. Copy of ABC Moving & Storage, Inc. correspondence, dated September 14, 20XX, making a settlement offer of \$200 to Ms. Harpsichord in response to her filed loss and damage claim.
5. Copy of Ms. Harpsichord's written request, dated September 21, 20XX, to use ABC Moving & Storage, Inc.'s arbitration program.
6. Copy of ABC Moving & Storage, Inc.'s letter, dated October 1, 20XX, advising Ms. Harpsichord that it does not have an arbitration program in place. Household Goods (HHG)
7. Signed statement by Mr. Halil Savala, owner of ABC Moving & Storage, Inc. admitting that the carrier does not have an arbitration program in place. Mr. Savala states that ABC Moving & Storage, Inc.'s arbitration agreement with In-Depth Arbitration Associates of New York, NY expired on April 1, 1999 and that a replacement program was not initiated.
8. Signed statements by Ms. Harpsichord confirming ABC Moving & Storage, Inc. did in-fact transport her household goods from New Haven, CT to Phoenix, AZ. Ms. Harpsichord verifies that she did request arbitration in an effort to recover additional loss and damages charges and that ABC Moving & Storage, Inc. admitted it had no arbitration program in place.

Updated in eFOTM: 07/06/07

1.4.16 Part B - Recommendations/Requirements

[What notification should be provided to the motor carrier at the conclusion of the compliance review?](#)

[What recommendations/requirements should you select in CAPRI?](#)

MANDATORY RECOMMENDATIONS

[Section 222 – Maximum Penalty Assessments \(Three-Strikes\)](#)

[Crash Data Preventability Review](#)

[New Hours of Service Recommendation](#)

PART B RECOMMENDATIONS

[Corrective Action Letter \(Applicable to all types of motor carriers\)](#)

[Security Notification \(America Needs You\)](#)

[Less than Satisfactory Safety Rating](#)

[Create the following recommendations for motor carriers who are to receive a proposed unsatisfactory safety rating:](#)

What notification should be provided to the motor carrier at the conclusion of the compliance review?

You should ensure that the motor carrier is aware of the proposed safety rating. CAPRI will generally print a copy of 385.15 and 385.17 and copies should be provided to the motor carrier. You should discuss the potential rating with the highest-ranking motor carrier official (sole proprietor, partner or corporate officer) if possible.

What recommendations/requirements should you select in CAPRI?

The specific recommendations/requirements should be tailored to the specific motor carrier being reviewed. The standard recommendations used in the CAPRI software can be used as a starting point with more detailed and specific recommendations added by you.

The official should be asked to sign, or initial, and date all pages of the compliance review. You must keep signed copies of all documents. Additionally, the motor carrier should initial, to verify receipt, the following recommendations/requirements.

MANDATORY RECOMMENDATIONS

Field staff should continue to insert the following language into Part B of the recommendation section of all compliance reviews.

1) Section 222 – Maximum Penalty Assessments (Three-Strikes)

As part of the closeout of the CR, the following language should be included in Part B recommendations:

Notice: Recurring violations of the same or related acute or critical regulations (violations of the same Part in Title 49, Code of Federal Regulations) that result in three enforcement actions within a six year period will cause the maximum penalties allowed by law to be assessed for the third enforcement action.

2) Crash Data Preventability Review

The Division Administrator/State Director will continue to consider preventability when a motor carrier contests a proposed safety fitness rating. The motor carrier may deem that the

recordable accident rate is not a fair means of evaluating its accident factor 6 on the Compliance Review. If so the motor carrier must submit the compelling evidence within five calendar days to:

*Division Administrator/State Director
Federal Motor Carrier Safety Administration
Mailing Address
City, State Zip Code*

Compelling evidence should include (but is not limited to) official police accident reports and official insurance accident investigation reports.

3) New Hours of Service Recommendation

All Interstate Carriers of Property should receive the following recommendation (include this notice as long as it is contained in the FOTM):

Notice: On October 1, 2005, the FMCSA published a final rule revising the hours of service regulations for commercial motor vehicle drivers. Under the new rule, driver may drive 11 hours after 10 consecutive hours off-duty, but may not drive beyond the 14th hour after coming on-duty. Similar to existing rules, drivers may not drive after being on-duty for 60 hours in a seven-consecutive-day period or 70 hours in an eight-consecutive-day-period. This on-duty cycle may be restarted whenever a driver takes at least 34 consecutive hours off-duty. A short haul provision was also added allowing drivers of property carrying CMV's which do not require a Commercial Driver's License for operation and who operate within a 150 air mile radius of their normal work reporting location are not required to keep records of duty status (RODS).

Carriers and commercial motor vehicle drivers are required to comply with the current hours-of-service rules through September 30, 2005. Compliance with the "new" regulations is mandatory for carriers, except passenger-carrying operations, beginning on October 1, 2005. Passenger-carrying motor carriers and drivers are not subject to the new maximum driving limits. For more information on these regulations, please access the FMCSA website at <http://www.fmcsa.dot.gov/>.

PART B RECOMMENDATIONS

Notice: On August 25, 2005, the FMCSA published a final rule revising the hours-of-service regulations for commercial motor vehicle drivers. The new federal hours of service (becomes effective on October 1, 2005, statutory requirements provide that FMCSA enforcement of the new HOS) regulations took effect October 1, 2005, which included changes to rule may only begin on October 25, 2005. FMCSA will provide the sleeper berth and short-haul provisions. These regulations only apply industry with a transitional period to property adjust to the new HOS rules. The transitional period will be from October 1, 2005 and continue through December 31, 2005, and will allow carriers and commercial motor vehicle (cmv) drivers operating State enforcement agencies time to train their employees.

From October 25, 2005 through December 31, 2005, FMCSA personnel will exercise discretion operating in interstate commerce. Passenger carriers and their drivers will continue operating under the pre-2003 rules while fatigue issues specific to the passenger carrier industry are assessed. Under the new rule, CMV drivers using the sleeper berth

provision must take at least 8 consecutive hours enforcing the new rule. This is more fully explained hours in the sleeper berth, plus 2 consecutive hours either in the sleeper berth, off duty, or any combination of the two. The 14-hour on-duty window may not be extended with off-duty time for meal and fuel stops, etc. The prohibition on driving after being on duty 60 hours in 7 consecutive days, or 70 hours in 8 consecutive days, remains the same, but drivers can "restart" the 7/8 day period anytime a driver has 34 consecutive hours off duty. For more information on these regulations, please access the FMCSA website at www.fmcsa.dot.gov.

STARVING STUDENTS

PLEASE NOTE: The violations discovered during this compliance review may affect the civil penalty proposed in any subsequent Notice of Claim. In addition, your history of prior violations of the Federal Motor Carrier Safety Regulations, Federal Hazardous Material Regulations or the Federal Motor Carrier Commercial Regulations may also affect the civil penalty proposed in any subsequent Notice of Claim. Your signature for receipt of this report acknowledges your understanding that the violations discovered by the FMCSA during this review/inspection may be used to calculate any civil penalty proposed as a result of this review. Your signature is not an admission of the violations identified Attachment A. FMCSA will also strongly encourage our State partners to you by the investigator. show comparable enforcement discretion.

[For cases in which enforcement will be taken] Attached to this report is Table 1, which identifies all the documented violations which were discovered during the course of this [compliance review/roadside inspection].

4) Corrective Action Letter (Applicable to all types of motor carriers)

You may prepare a corrective action letter, addressing the measures taken to correct the violations identified within this report. Submit this letter, and any additional evidence necessary to prove the corrective action has been taken to:

Field Administrator

FMCSA, "Specific" Service Center

Mailing Address

City, State Zip Code

Ensure that a CC copy of the letter is mailed to:

Division Administrator/State Director

FMCSA, "Specific" Division

Mailing Address

City, State Zip Code

This letter should be submitted as soon as possible. If you have a proposed Unsatisfactory or Conditional Rating the letter must be submitted prior to the effective date of your Unsatisfactory or Conditional Rating.

5) Security Notification (America Needs You)

All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities.

Discuss with your employees/drivers the "Security Measures for Truck Drivers and Companies" which were provided and reviewed with motor carrier official.

6) Less than Satisfactory Safety Rating

The specific recommendations/requirements should be tailored to the specific motor carrier being reviewed. The standard recommendations used in the CAPRI software can be used as a starting point with more detailed and specific recommendations added by you. The following recommendations/requirements should be included in Part B of the compliance review:

385.15

If you believe the proposed rating is in error and there are factual and procedural issues in dispute, Part 385.15 (copy provided) outlines procedures for petitioning the Federal Motor Carrier Safety Administration for an administrative review of these findings. Your petition should be addressed to:

*Mr. John Hill, Chief Safety Officer
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE,
Washington, DC 20590*

385.17

In addition, a request for a revised rating based on corrective actions may be made at any time. Part 385.17 (copy provided) outlines the procedures for such a request. The request must be made in writing, must describe the corrective action taken and must include other documentation that may be relied upon as a basis for the requested change. Address your written request to:

*Field Administrator
Federal Motor Carrier Safety Administration
Mailing Address
City, State Zip Code*

7) Create the following recommendations for motor carriers who are to receive a proposed unsatisfactory safety rating:

For Proposed Unsatisfactory Rating for Passenger & Placardable HM Carrier

This review will result in a Proposed Safety Rating. The findings indicate you are currently operating at an unsatisfactory level of safety compliance. A written notice of proposed unsatisfactory rating will be sent to you by the FMCSA via U.S. Mail. If you fail to obtain an improved rating within 45 days of the date that notice is sent, the unsatisfactory rating will become final and you must cease interstate operations.

Information on your compliance status, roadside inspections, regulatory changes, accident counter measures and hazardous material counter measures is available on the Internet at the Federal Motor Carrier Safety Administration's web site at <http://www.fmcsa.dot.gov/> and <http://www.safer.fmcsa.dot.gov/>.

For Proposed Unsatisfactory Rating for All Other Motor Carriers

This review will result in a Proposed Safety Rating. The findings indicate you are currently

operating at an unsatisfactory level of safety compliance. A written notice of proposed unsatisfactory rating will be sent to you by the FMCSA via U.S. Mail. If you fail to obtain an improved rating within 60 days of the date that notice is sent, the unsatisfactory rating will become final and you must cease interstate operations.

Information on your compliance status, roadside inspections, regulatory changes, accident counter measures and hazardous material counter measures is available on the Internet at the Federal Motor Carrier Safety Administration's web site at <http://www.fmcsa.dot.gov/> and <http://www.safer.fmcsa.dot.gov/>.

NOTICE: On March 30, 2004, FMCSA published a final rule requiring employers to review a candidate's safety performance history data within 30 days of hiring a new driver. The final rule enables prospective employers to obtain and use more complete driver safety performance history during the hiring process. Prospective employers are required to, at a minimum, investigate a driver's employment information, accident record, and alcohol and controlled substances history from all employers the driver worked for within the previous 3 years.

All previous employers are required to respond to the investigating employer within 30 days of receiving the investigation request.

For more information on these regulations, please access FMCSA's Web site at www.fmcsa.dot.gov.

1.4.16.1 Illustration RE-1

Security Measures for Truck Drivers and Companies

Since September 11, 2001 your role as a truck driver and company owner has become more important. Now more than ever America depends on you to move freight safely and securely, especially if you transport hazardous materials. While highly valued commodities have always been hijacking targets, shipments capable of mass destruction or environmental damage must be protected with the utmost care.

We are counting on YOU!

One lesson from September 11th, is never underestimate our enemies or the potential danger of any situation. If something doesn't seem right, Call the Police, the FBI, or your dispatcher and report it. In an emergency, Call 911 immediately!

While you or your driver is on the road:

- Be alert, when leaving. Criminal surveillance often begins at, or within a mile of, your origin.
- Don't discuss your cargo, destination, or other trip specifics on open channels or near people you don't know.
- If you believe you are being followed - Call 911 and your dispatcher immediately.

- Avoid being boxed in. When possible leave room in front of and behind your truck
- Look for vehicles following you, especially if there are 3 or more people in the car.
- If you believe you are being hijacked, try to keep your truck moving.

While you or your driver is stopped:

Leave your truck in a secure parking lot or truck stop if possible; if not, be certain someone can watch your vehicle.

- If team driving, always leave one person with the truck.
- Never leave your vehicle running with the keys in it; shut off the engine and lock the doors.
- If at all possible, do not stop in "hot spots" - unsafe or high crime areas.
- Always lock the cargo door(s) with padlocks.
- Use seals to prevent and identify tampering.

While you or your driver is operating your vehicle:

- Use an engine kill switch
- Use tractor and trailer brake-locking devices.
- Criminals know about electronic tracking systems, and how to dismantle them, check your system regularly, and notify dispatch when it's not working.
- If you drop a trailer, use a fifth wheel lock whenever possible.

Terrorist threats are real and here to stay. You play a vital roll in protecting your family, friends, and countrymen. For more information on how to reduce your risk of hijacking, including information on what your company can do, see <http://www.fmcsa.dot.gov/safety-security/security/mcs.htm>

1.4.17 General Guidelines for Initiating an Enforcement Action

[Introduction](#)

[Initiating an Enforcement Action](#)

[Nine Factors to Consider When Assessing Penalties](#)

[Understanding Your Evidence](#)

[Authentication](#)

[Hearsay and Proof](#)

[Conducting Interviews and Obtaining Witness Statements](#)

[What are the three principle techniques for questioning a witness?](#)

[Gathering Your Documents For The Enforcement Action](#)

[Preparation of the Enforcement Report](#)

[Uniform Fine Assessment \(UFA\)](#)

[CaseRite](#)

[Notice of Claim](#)

[Notice to Abate](#)

[Statement Of Charges](#)

[Service List](#)

[Illustration E-1: Driver Penalty Assessment Worksheet](#)

[Illustration E-2: Carrier Penalty Assessment Worksheet for Safety/HM Violations](#)

[Illustration E-3: Commercial Penalty Assessment Worksheet](#)

[Illustration E-4: Household Goods Penalty Assessment Worksheet](#)

[Illustration E-5: Most Commonly Cited Violations w/Enforcement](#)

[Illustration E-6: Photographic Declaration](#)

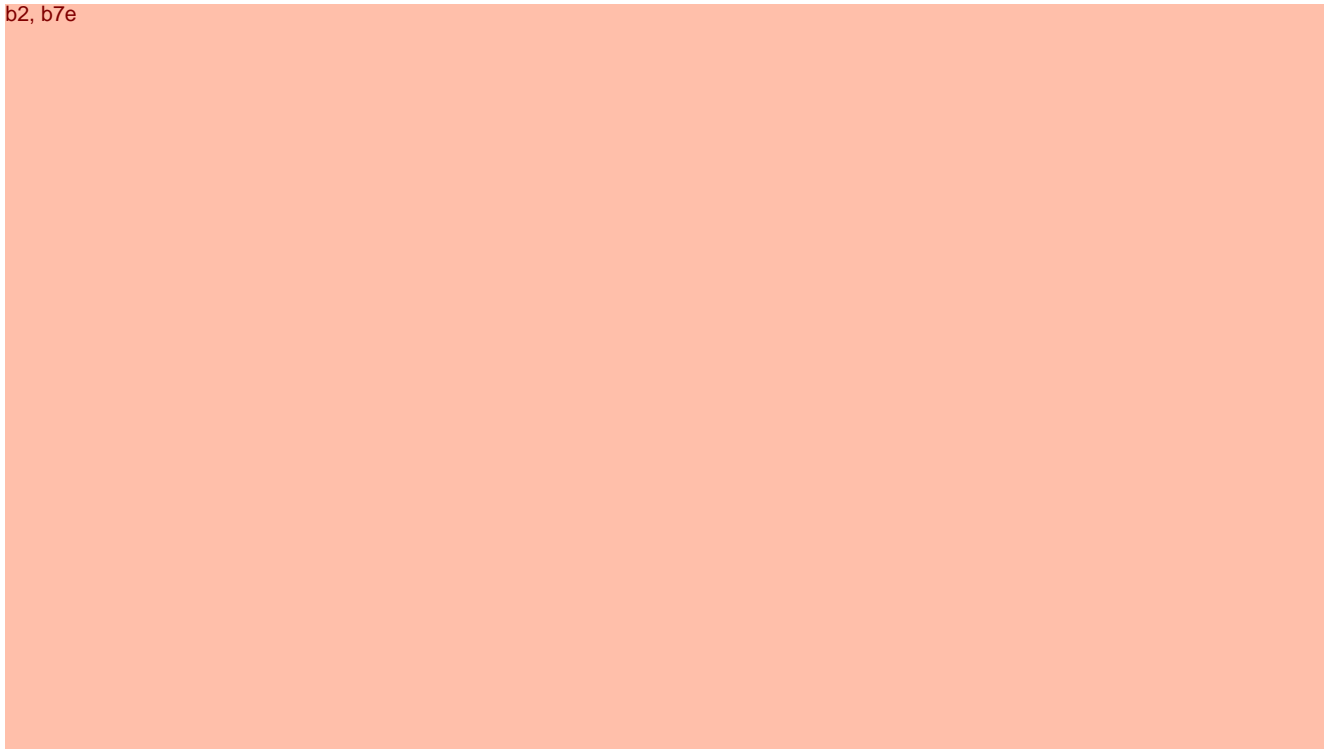
[Illustration E-7: Statement of Charges](#)

[Illustration E-8: Written Statement with Perjury Clause](#)

[Illustration E-9: Oral Interview Form](#)

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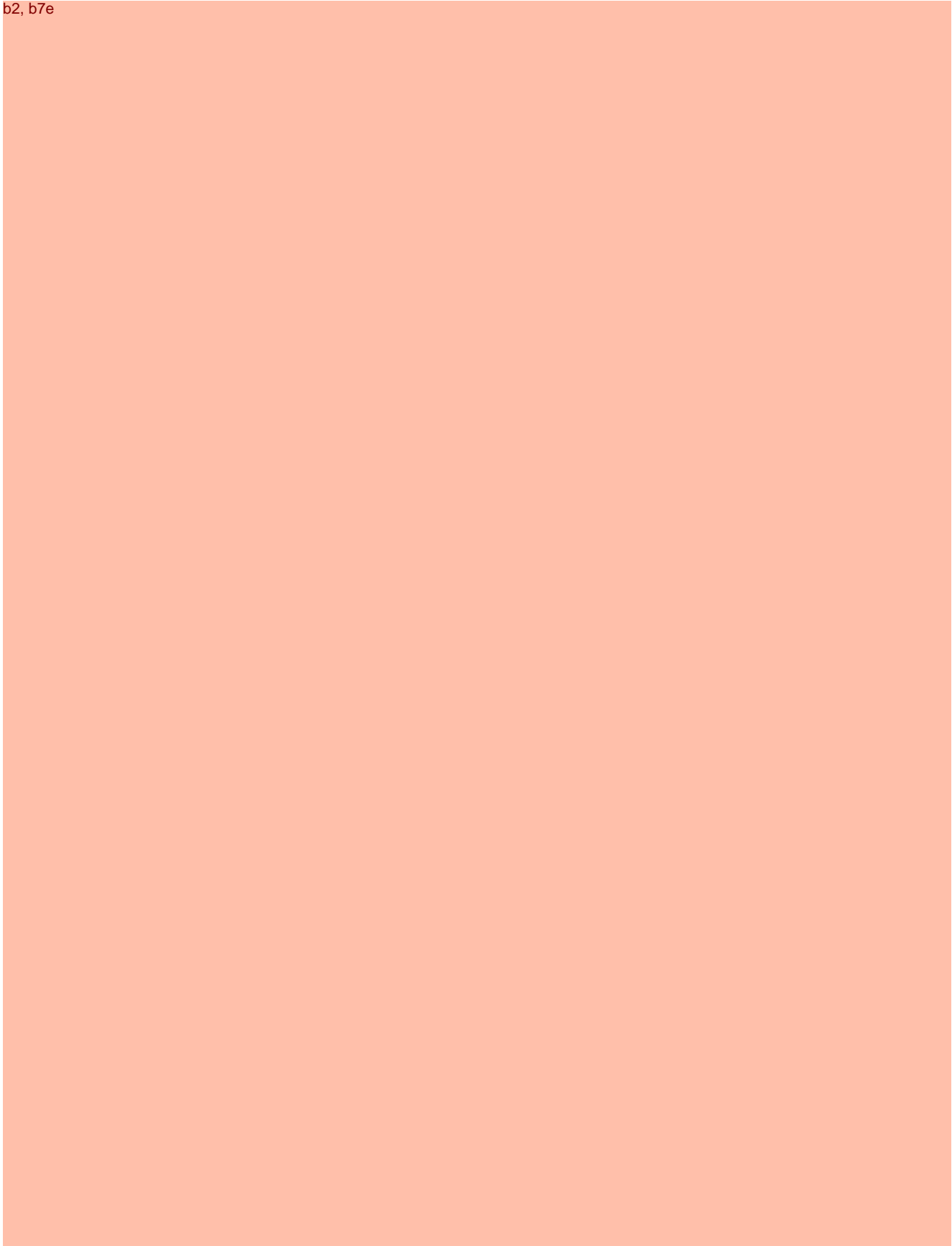
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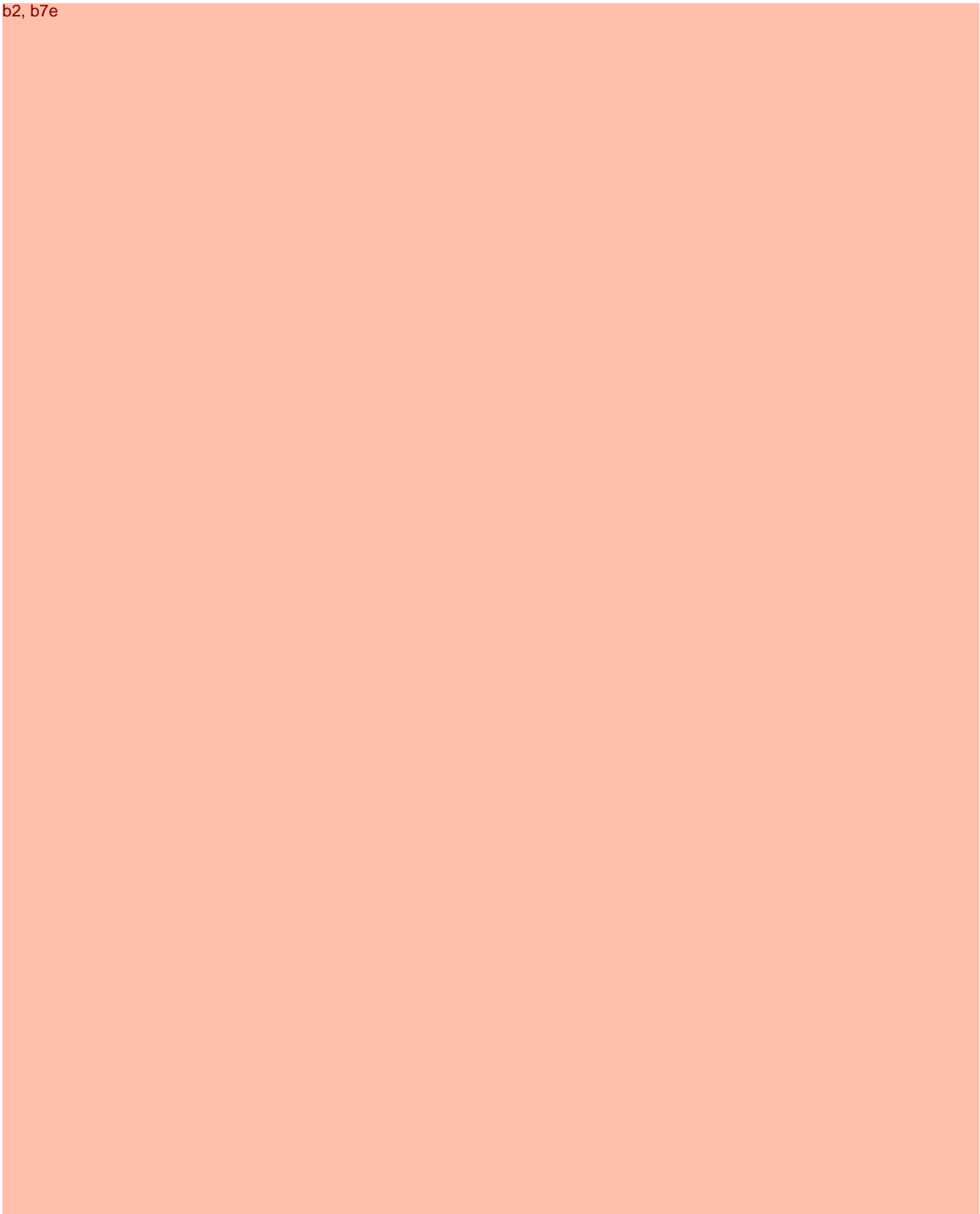


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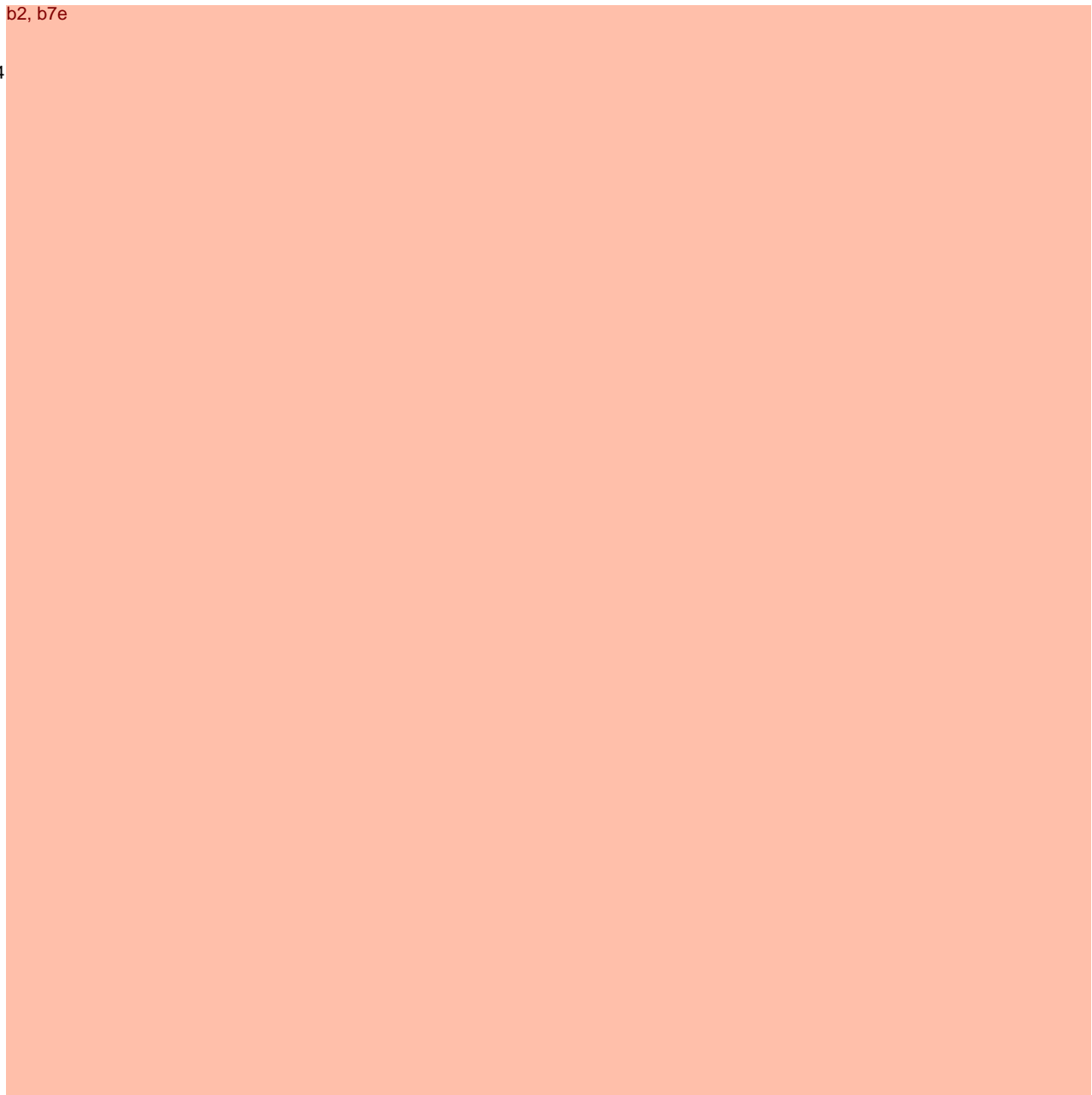
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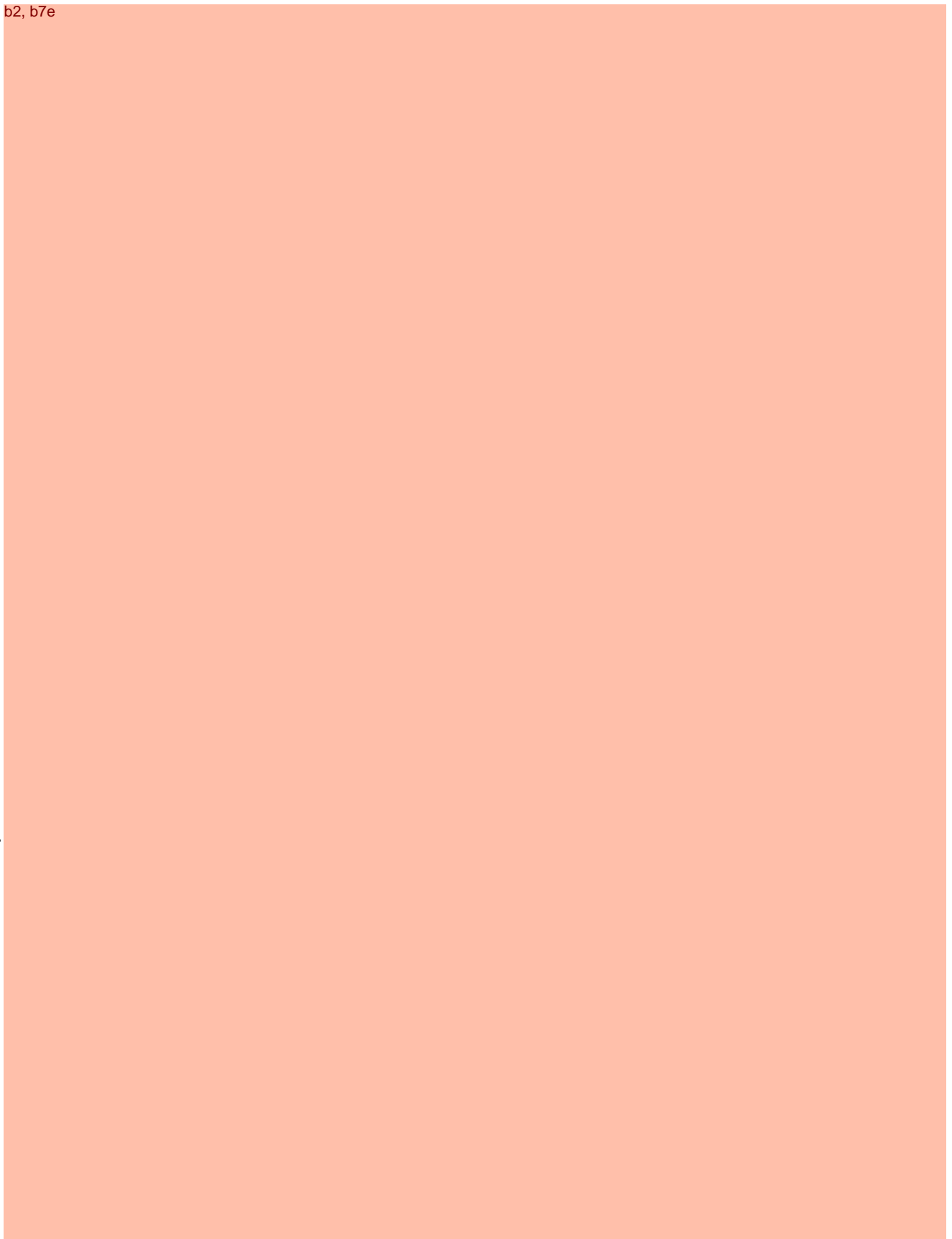


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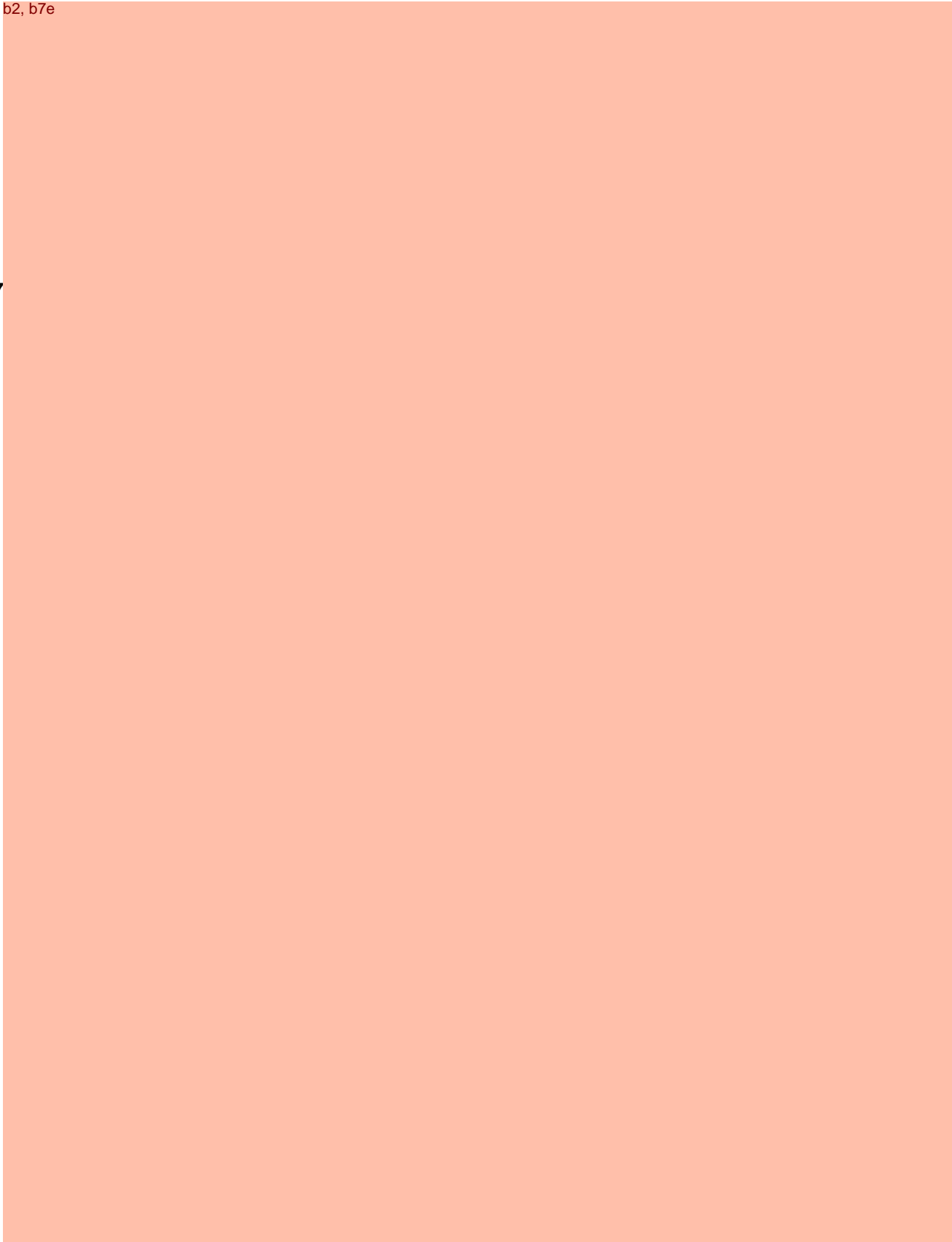


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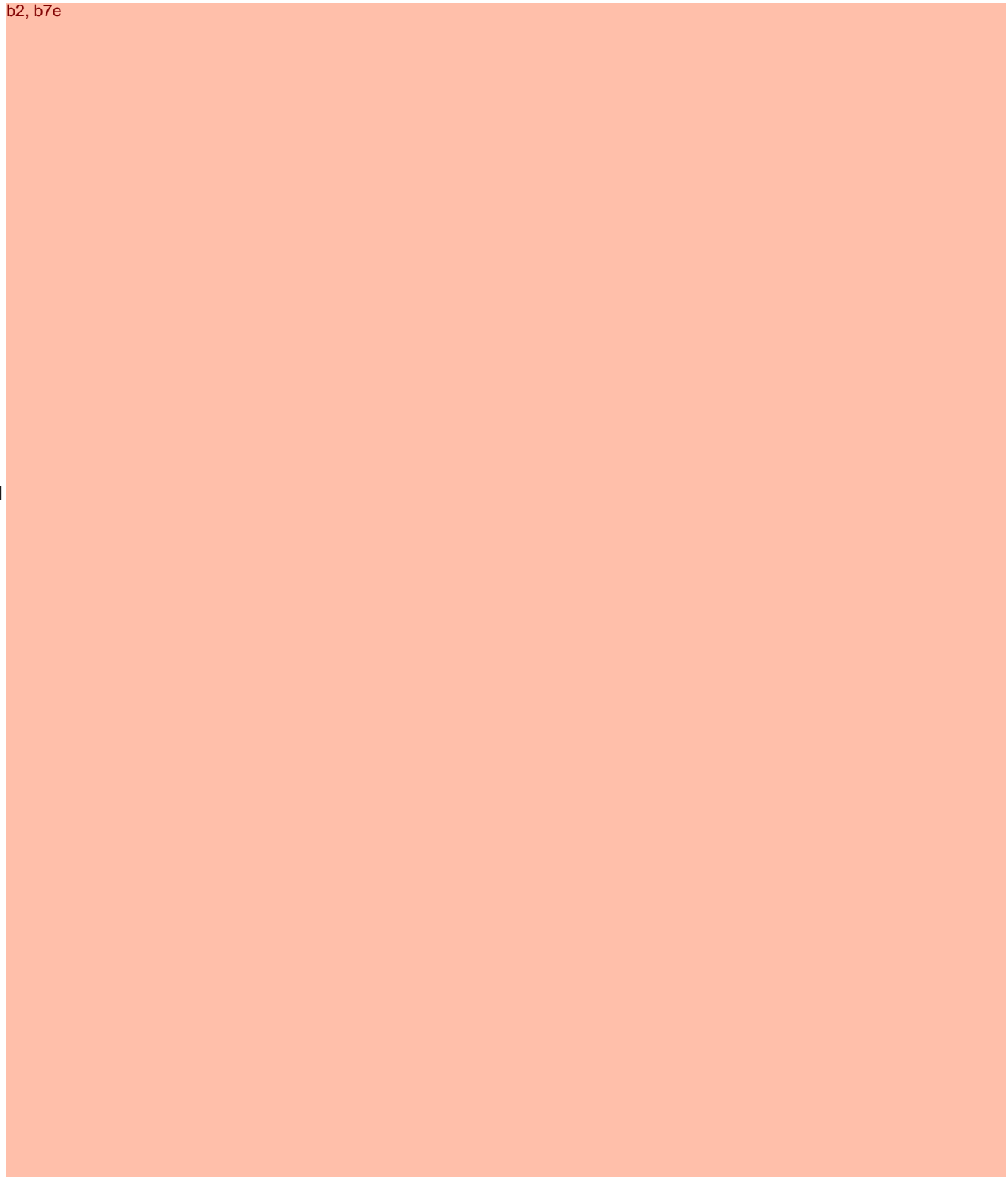
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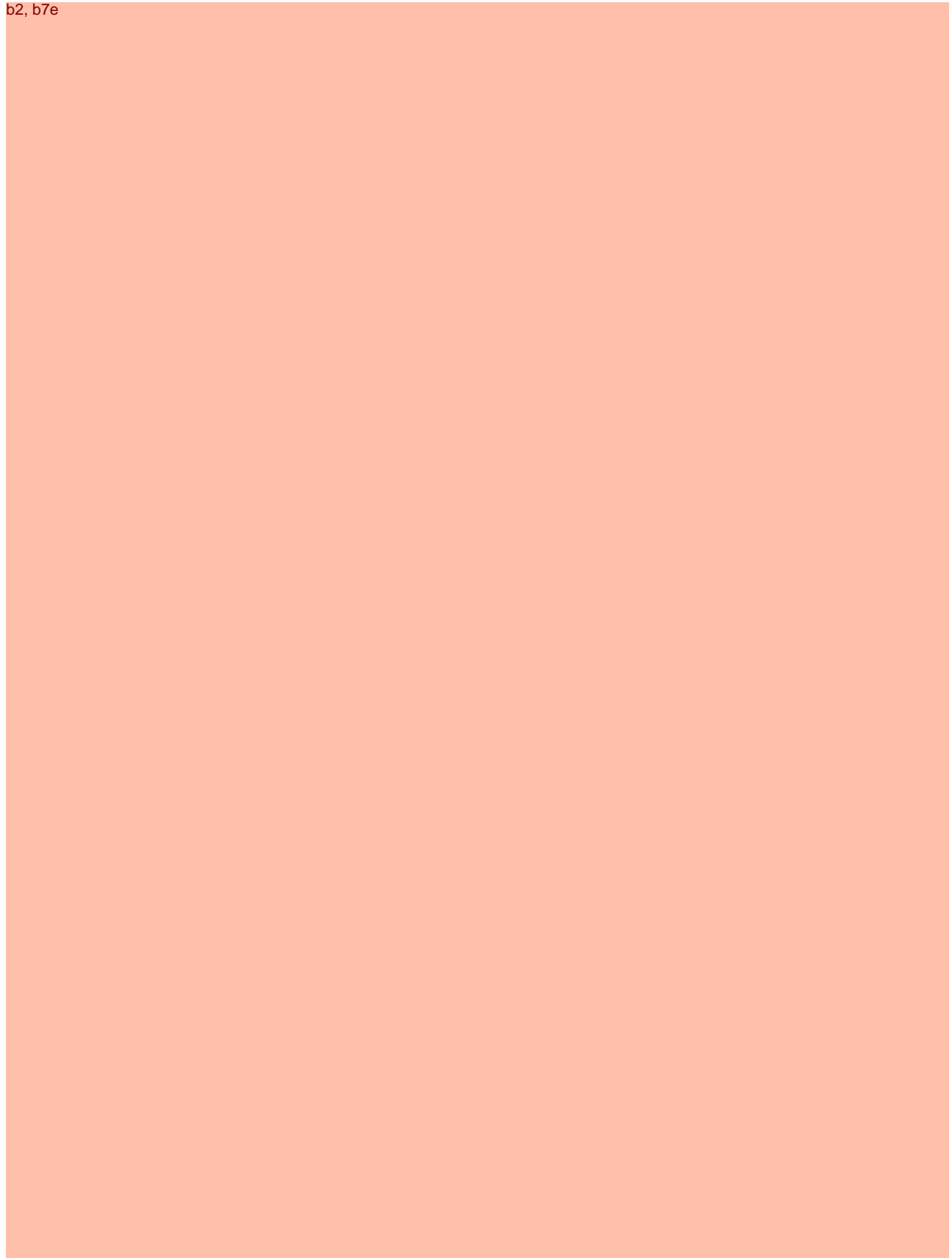
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1.4.17.11 Notice of Claim

[Notice of Claim Settlement Agreement Memo](#)

What is the Notice of Claim?

A Notice of Claim (NOC) is the official charging document used by the Federal Motor Carrier Safety Administration to initiate a civil action for violation of Federal Laws and Regulations under the jurisdiction of this agency (the Federal Motor Carrier Safety Regulations, the Federal Hazardous Materials Regulations, and violations of the United States Code). The Notice of Claim states the amount of penalty, provides a summary of the violations, and a statement of charges, presents a notice to abate the violations, and includes information pertaining to hearings, negotiation, and failure on the part of the subject to reply to the notice.

How do I generate a Notice of Claim?

CaseRite automatically generates the Notice of Claim based on additional information gathered from the Compliance Review and the Uniform Fine Assessment program if used.

What information does the NOC provide to the respondent?

It is imperative to ensure legal sufficiency and clear conveyance of the enforcement action to the respondent; therefore it is essential that the NOC do the following:

- Address the appropriate respondent (addressee),
- Lay the foundation for the claim [violations discovered during a compliance review or roadside inspection at a specified location on a certain date(s)],
- Provide a statement of the provisions of the law alleged to have been violated,
- Specify the amount being claimed for each violation and the maximum amount authorized to be claimed under the statute,
- State steps necessary to abate the violations (optional),
- Provide legal authority for FMCSA to issue the NOC,
- Direct the respondent on how to respond to the NOC,
- State the charges with a clear, concise and complete description,
- Include a service list, and
- Transmit a copy of Part 386.

The CaseRite software program will generally be used to produce a nationally uniform NOC. Any change in the language of the NOC, except for necessary modifications in cases against drivers, other carrier employees, shippers or cargo tank facilities, must have the concurrence of the Service Center Enforcement Team. The Service Center Enforcement Team must consult with a Service Center legal counsel on any wording change or modification.

1.4.17.12 Notice To Abate

What is the Notice to Abate and where can it be found?

The Notice to Abate, within the Notice of Claim, orders the carrier to stop committing violations of our regulations. Language for specific violations is provided in CaseRite.

1.4.17.13 Statement Of Charges

What is the Statement of Charges?

The Statement of Charges is a clear, concise and complete description of the alleged violations. It may be one of the most critical components of the NOC without which the respondent cannot be expected to respond to the charges.

The respondent may not be held accountable for failing to respond to charges which are insufficiently described and/or fail to establish jurisdiction and the who, how, where and what of a violation. [Illustration E-7](#) contains statement of charges language for most acute and critical violations.

1.4.17.14 Service List

What is the Service List?

The Service List certifies that the Notice of Claim was provided to the respondent, their legal representative, the Division Administrator/State Director, the Motor Carrier Docket Clerk, the Service Center, and any other appropriate party.

The service list must contain the following statement:

This is to certify that on the ___ day of _____ 20_, the undersigned sent as indicated the designated number of copies of the Notice of Claim to each of the parties listed below.

Additionally, it must contain the enforcement case number, the same addressee as shown on the NOC, the respondent's legal representative and his/her address (if applicable), the Division Administrator's/State Director's name and address, and the Motor Carrier Docket Clerk, and his/her address in the Service Center.

The original is served on the respondent, and one copy is served on the rest of the parties. The name of the individual who has served (mailed) the NOC must be typed or printed at the end of the service list and that person **must sign** the service list.

What steps should I take to complete an enforcement action?

After you complete the documentation process of your enforcement action, you should submit the completed document with evidence to the Division Administrator/State Director, Federal Program Specialist, Division Program Specialist, or Field Office Supervisor, as appropriate for review.

Investigators preparing an enforcement report should give its completion the **highest priority** before scheduling new work activity and the Division Administrator/State Director should ensure that investigators do so. Inspectors and Investigators should review the report for clarity and factual accuracy, prior to submitting the enforcement report to the reviewing official. You should submit an electronic export of the enforcement action either on a floppy diskette, or as an email attachment to the reviewing official.

1.4.17.15 Illustration E-1: Driver Penalty Assessment Worksheet

DRIVER PENALTY ASSESSMENT WORKSHEET (PER VIOLATION)		
Drivers Name:	Social Security Number:	Case Number:
Violation Charge:		

CONSIDERATIONS	APPLICABLE LEVEL (Choose One)	POINTS	TOTAL POINTS
NATURE	Recordkeeping	1	
	CDL	2	
	Non-record keeping	3	
	Hazardous Materials and Safety Permitting	4	
	Violation of OOS order by CDL holder	4	
CIRCUMSTANCES	Mitigating	-1	
	None	0	
	Aggravating	1	
EXTENT	One occurrence	1	
	Two occurrences	2	
	More than two occurrences	3	
GRAVITY	Unlikely to cause/contribute to accident	1	
	Reasonably caused/contributed to accident	2	
	Caused/Contributed to accident	3	
CULPABILITY	Had no knowledge of the violation.	0	
	Should have known of violation	1	
	Knew of the violation.	2	
	Knew of the violation and disregarded.	3	
HISTORY (Six Years)	No history	0	
	Previously penalized for violation(s) in other Part(s)	1	

	(closed case only)		
	Previously penalized for violation(s) in same Part (closed case only)	2	
	Two previous enforcement cases (closed cases only)	2	
ABILITY TO PAY/STAY IN BUSINESS	With some difficulty	1	
	No difficulty	2	
	Violation is egregious	3	
OTHER MATTERS AS JUSTICE AND PUBLIC SAFETY MAY REQUIRE	Positive - cooperation, attitude, institution/revision of safety program, etc.	-1	
	None	0	
	Negative - lack of cooperation, attitude, no safety program, speed of compliance, etc.	1	
OTHER CONSIDERATIONS (Continue on separate sheet).			
COMMENTS (Continue on separate sheet).			
TOTAL POINTS			

TOTAL PENALTY ASSESSED: \$ _____

DRIVER PENALTY ASSESSMENT WORKSHEET TABLE

There is a statutory maximum penalty of \$2,750 that can be assessed against a driver for each non-record keeping violation: and there is a statutory maximum penalty of \$550 for each record keeping violation. The maximum penalty for each hazardous materials violation is \$32,500, and the maximum for each CDL violation and OOS violations by a CDL holder is \$3,750.

For each violation, the applicable penalty is to be assessed as follows:

Driver Penalty Assessment Worksheet Table

POINTS ASSESSED	RECORD-KEEPING	CDL	NONRECORD-KEEPING	HAZARDOUS MATERIALS	OOS VIOLATION BY CDL HOLDER
2	\$50				

3	\$50	\$100			
4	\$50	\$125	\$100		
5	\$100	\$150	\$100	\$350	\$2,100
6	\$100	\$175	\$150	\$400	\$2,200
7	\$100	\$200	\$150	\$450	\$2,300
8	\$150	\$225	\$200	\$500	\$2,400
9	\$150	\$250	\$200	\$550	\$2,500
10	\$150	\$275	\$250	\$600	\$2,600
11	\$200	\$300	\$250	\$650	\$2,700
12	\$200	\$325	\$300	\$700	\$2,800
13	\$200	\$350	\$300	\$750	\$2,900
14	\$250	\$375	\$350	\$800	\$3,000
15	\$250	\$400	\$350	\$850	\$3,100
16	\$250	\$450	\$400	\$900	\$3,200
17	\$300	\$500	\$400	\$950	\$3,300
18		\$550	\$450	\$1,000	\$3,400
19			\$450	\$1,250	\$3,500
20				\$1,500	\$3,600

1.4.17.16 Illustration E-2: Safety Regulations Carrier CR/Roadside

CARRIER ROADSIDE PENALTY ASSESSMENT WORKSHEET FOR SAFETY VIOLATIONS (PER VIOLATION)			
Carriers Name:	Census Number:		Case Number:
Violation Charge:			
CONSIDERATIONS	APPLICABLE LEVEL (Choose One)	POINTS	TOTAL POINTS
NATURE	Recordkeeping	1	
	CDL	2	
	Non-record keeping	3	
	Financial Responsibility	3	
	Hazardous Materials and Safety Permitting	4	

	Violation of OOS order by CDL holders	4	
CIRCUMSTANCES	Mitigating	-1	
	None	0	
	Aggravating	1	
EXTENT	One occurrence	1	
	Two occurrences	2	
	More than two occurrences	3	
GRAVITY	Unlikely to cause/contribute to accident	1	
	Reasonably caused/contributed to accident	2	
	Caused/Contributed to accident	3	
CULPABILITY	Had no knowledge of violation	0	
	Should have known of the violation.	1	
	Knew of the violation.	2	
	Knew of the violation and disregarded.	3	
HISTORY (Six Years)	No history	0	
	Previously penalized for violation(s) in other Part(s) (closed case only)	1	
	Previously penalized for violations in same Part (closed case only)	2	
	Two previously enforcement cases (closed cases only)	2	
ABILITY TO PAY/STAY IN BUSINESS	With some difficulty	1	
	No difficulty	2	
	Violation is egregious	3	
OTHER MATTERS AS JUSTICE AND PUBLIC SAFETY MAY REQUIRE	Positive - cooperation, attitude, institution/revision of safety programs, etc.	-1	
	None	0	
	Negative - lack of cooperation, attitude, no safety program, speed of compliance, etc.	1	
OTHER CONSIDERATIONS (Continue on separate sheet)			
COMMENTS (Continue on separate sheet)			
TOTAL POINTS			

Note: In cases where one of the above-mentioned violations results in a crash or incident, the maximum amount allowed should be assessed (see Penalty Assessment Table).

TOTAL PENALTY ASSESSED: \$ _____
CARRIER ROADSIDE PENALTY ASSESSMENT FOR SAFETY/HM VIOLATIONS (Per

Violation) TABLE

There is a maximum \$11,000 penalty assessment on an entity per violation for non-record keeping violations; and there is a maximum \$550 penalty for each record keeping violation. The maximum penalty for each financial responsibility violation and violations of the OOS order by an employer of a CDL holder is \$16,000 per violation, the maximum penalty for each hazardous materials violation is \$32,500, and the maximum for each CDL violation is \$3,750.

For each violation, the applicable penalty is to be assessed as follows:

POINTS ASSESSED	RECORD-KEEPING	CDL	NONRECORD - KEEPING	FINANCIAL RESPONSIBILITY	HAZARDOUS MATERIALS	OOS VIOLATION BY CDL HOLDER
2	\$270					
3	\$280	\$500				
4	\$290	\$525	\$700	\$800		
5	\$300	\$550	\$725	\$800	\$1,000	\$3,750
6	\$310	\$575	\$750	\$800	\$1,250	\$4,000
7	\$320	\$600	\$800	\$850	\$1,500	\$4,250
8	\$330	\$625	\$800	\$850	\$1,750	\$4,500
9	\$340	\$650	\$850	\$900	\$2,000	\$4,750
10	\$350	\$675	\$850	\$925	\$2,250	\$5,000
11	\$360	\$700	\$900	\$950	\$2,500	\$5,250
12	\$370	\$750	\$925	\$975	\$2,750	\$5,500
13	\$380	\$800	\$950	\$1,000	\$3,000	\$5,750
14	\$390	\$850	\$975	\$1,250	\$3,250	\$6,000
15	\$400	\$900	\$1,000	\$1,500	\$3,500	\$6,500
16	\$425	\$950	\$1,250	\$1,750	\$3,750	\$7,000
17	\$450	\$1,000	\$1,500	\$2,000	\$4,000	\$7,500
18		\$1,125	\$1,750	\$2,225	\$4,250	\$8,000
19			\$2,000	\$2,500	\$4,500	\$8,500
20					\$4,750	\$9,000

1.4.17.17 Illustration E-3: Commercial Penalty Assessment Worksheet

COMMERCIAL PENALTY ASSESSMENT WORKSHEET (PER VIOLATION)		
Name:	Census/MC Number:	Case Number:
Violation Charge:		

CONSIDERATIONS	APPLICABLE LEVEL (Choose One)	POINTS	TOTAL POINTS
NATURE	Registration (For-Hire) - Property	1	
	Operating Beyond CZ or with no Authority -Mexico-domiciled Carriers	1	
	Registration (For-Hire) - Passenger	2	
	Operating Beyond CZ or with no Authority (Intentionally) - All Mexico-domiciled Carriers	2	
	Operating Beyond CZ or with no Authority (Intentionally - Pattern) - All Mexico-domiciled Carriers	3	
	Registration (For Hire)- Hazardous Waste	3	
CIRCUMSTANCES	Mitigating	-1	
	None	0	
	Aggravating	1	
EXTENT	One occurrence	1	
	Two occurrences	2	
	More than two occurrences	3	
GRAVITY	Unlikely to cause/contribute to accident	1	
	Reasonably caused/contributed to accident	2	
	Caused/Contributed to accident	3	
CULPABILITY	Had no knowledge of the violation	0	
	Should have known of the violation.	1	
	Knew of the violation.	2	
	Knew of the violation and disregarded.	3	
HISTORY (Six Years)	No history	0	
	Previously penalized for violation(s) in other Part(s) (closed case only)	1	
	Previously penalized for violation in same Part (closed case only)	2	
	Two previous enforcement cases (closed cases only)	2	
ABILITY TO PAY/STAY IN BUSINESS	With some difficulty	1	
	No difficulty	2	
	Violation is egregious	3	
OTHER MATTERS AS JUSTICE AND PUBLIC	Positive - cooperation, attitude, institution/revision of safety programs, etc.	-1	

SAFETY MAY REQUIRE	None	0	
	Negative - lack of cooperation, attitude, no safety program, speed of compliance, etc	1	
OTHER CONSIDERATIONS (Continue on separate sheet)			
COMMENTS (Continue on separate sheet)			
TOTAL POINTS			

Note: In cases where one of the above-mentioned violations results in a crash or incident, the maximum amount allowed should be assessed (see Penalty Assessment Table).

TOTAL PENALTY ASSESSED: \$ _____
COMMERCIAL PENALTY ASSESSMENT WORKSHEET (Per Violation)

The minimum penalty for registration violations, for-hire motor carriers of property is \$550. The minimum penalty for registration violations, for-hire motor carriers of passengers is \$2,200. The maximum penalty for hazardous waste registration violations, motor carriers or brokers, is \$22,000. The minimum penalty for violations of operating beyond the scope of authority or with no authority is \$550. The maximum penalty for violations of intentionally operating beyond the scope of authority or with no authority is \$11,000. The maximum penalty for a pattern of violations of intentionally operating beyond the scope of authority or with no authority is \$27,500. Carriers may be cited for a separate violation for each day the violation continues.

Note: The following only applies to Mexico-domiciled carrier operations.

For each violation, the applicable penalty is to be assessed as follows:

REGISTRATION PENALTY ASSESSMENT TABLE

POINTS ASSESSED	REGISTRATION (FOR-HIRE) - PROPERTY	REGISTRATION (FOR-HIRE) - PASSENGERS	REGISTRATION - HAZARDOUS WASTE
2	\$1,000		
3	\$1,000	\$2,200	
4	\$1,000	\$2,200	\$4,500
5	\$1,000	\$2,200	\$5,000
6	\$1,000	\$2,200	\$5,500
7	\$1,000	\$2,200	\$6,000
8	\$1,000	\$2,200	\$7,000

9	\$1,000	\$2,200	\$8,000
10	\$1,000	\$2,200	\$9,000
11	\$1,000	\$2,200	\$10,000
12	\$1,150	\$2,700	\$11,000
13	\$1,300	\$3,200	\$12,000
14	\$1,550	\$3,700	\$13,000
15	\$1,800	\$4,200	\$14,000
16	\$2,100	\$4,800	\$15,000
17	\$2,400	\$5,400	\$16,000
18		\$6,000	\$17,000
19			\$18,000

OPERATING AUTHORITY - PENALTY ASSESSMENT TABLE

POINTS ASSESSED	OPERATING BEYOND CZ OR WITH NO AUTHORITY - MEXICO-DOMICILED CARRIERS	INTENTIONALLY OPERATING BEYOND CZ OR WITH NO AUTHORITY - MEXICO-DOMICILED CARRIERS	PATTERN OF INTENTIONALLY OPERATING BEYOND CZ OR WITH NO AUTHORITY - MEXICO-DOMICILED CARRIERS
2	\$1,000		
3	\$1,000	\$1,500	
4	\$1,000	\$2,000	\$2,500
5	\$1,000	\$2,500	\$3,000
6	\$1,000	\$3,000	\$3,500
7	\$1,000	\$3,500	\$4,000
8	\$1,000	\$4,000	\$5,000
9	\$1,000	\$4,500	\$6,500
10	\$1,000	\$5,000	\$8,000
11	\$1,000	\$5,500	\$9,500
12	\$1,150	\$6,000	\$11,000
13	\$1,300	\$6,500	\$12,500
14	\$1,550	\$7,000	\$14,000
15	\$1,800	\$7,500	\$15,500
16	\$2,100	\$8,000	\$17,000
17	\$2,400	\$8,500	\$18,500
18		\$9,000	\$20,000
19			\$21,500

1.4.17.18 Illustration E-4: Household Goods Penalty Assessment Worksheet

HOUSEHOLD GOODS PENALTY ASSESSMENT WORKSHEET (PER VIOLATION)		
Name:	Census/MC Number:	Case Number:
Violation Charge:		

CONSIDERATIONS	APPLICABLE LEVEL (Choose One)	POINTS	TOTAL POINTS
NATURE	Recordkeeping	1	
	Non-Recordkeeping	1	
	Loss and Damage	1	
	Financial Responsibility	2	
	Service Delay	2	
	Weights	2	
	Tariff	3	
	Arbitration Program	4	
	110% Rule (375.3(d))	4	
DEGREE OF CULPABILITY	Had no knowledge of violation	0	
	Should have known of the violation.	1	
	Knew of the violation.	2	
	Knew of the violation and disregarded.	3	
HISTORY OF PRIOR CONDUCT (Six Years)	No history	0	
	Previously cited for violation(s) in other Part(s) (closed case only)	1	
	Previously cited for violations in same Part (closed case only)	2	
	Two previous enforcement cases (closed cases only)	2	
DEGREE OF HARM TO SHIPPER(S)	None	0	
	Little	1	
	Moderate	2	
	Severe	3	
ABILITY TO PAY/STAY IN BUSINESS	With some difficulty	1	
	No difficulty	2	
	Violation is egregious	3	
WHETHER SHIPPER HAS BEEN ADEQUATELY COMPENSATED BEFORE INSTITUTION OF ENFORCEMENT PROCEEDING	Yes- Compensated/Adequate	0	
	No- No Compensation/Attempting to Resolve	1	
	Yes- Compensated/Not Adequate	2	
	No- No Compensation/No Attempt to Resolve	3	
OTHER MATTERS AS JUSTICE AND PUBLIC SAFETY MAY REQUIRE	Positive - cooperation, attitude institution/revision of safety programs, etc.	-1	
	None	0	

	Negative-lack of cooperation, attitude, no safety program, speed of compliance, etc.	1	
OTHER CONSIDERATIONS (Continue on separate sheet)			
COMMENTS (Continue on separate sheet)			
TOTAL POINTS			

Note: In cases where one of the above-mentioned violations results in a consumer being intentionally harmed (e.g., Fraud, 110% Rule, Weights falsified), the maximum amount allowed should be assessed (see Penalty Assessment Table).

TOTAL PENALTY ASSESSED: \$ _____

HOUSEHOLD GOODS PENALTY ASSESSMENT WORKSHEET (Per Violation)

The minimum penalty for failing to comply with any regulation to protect individual shippers is \$1,100. The minimum penalty for falsifying documents, relating to evidence of shipment weight, is \$2,200 for the first violation and \$5,500 for each subsequent violation. The minimum penalty for charging for services not performed or reasonably necessary, in the safe adequate movement of a shipment, is \$2,200 for the first violation and \$5,500 for each subsequent violation. The regulations do not provide maximum penalties for household goods violations. Carriers may be cited for a separate violation for each day the violation continues. You will need to consult with your Division Administrator/State Director/Program Specialist when assessing penalties of these types.

For each violation, the applicable penalty is to be assessed as follows:

POINTS ASSESSED	FAILING TO COMPLY WITH ANY REGULATION TO PROTECT INDIVIDUAL SHIPPER	FALSIFIED DOCUMENTS RELATED TO SHIPMENT WEIGHT (FIRST VIOLATION)	CHARGING FOR SERVICES NOT PERFORMED/ NECESSARY (FIRST VIOLATION)	FALSIFIED DOCUMENTS RELATED TO SHIPMENT WEIGHT (SUBSEQUENT VIOLATIONS)	CHARGING FOR SERVICES NOT PERFORMED/ NECESSARY (SUBSEQUENT VIOLATIONS)
	Recordkeeping, Loss & Damage, Financial Responsibility, Service Delay, Arbitration Program, and 110% Rule.	Weight	Tariff		Tariff
1	\$1,100				
2	\$1,100	\$2,200		\$5,500	

3	\$1,100	\$2,200	\$2,200	\$5,500	\$5,500
4	\$1,100	\$2,200	\$2,200	\$5,500	\$5,500
5	\$1,100	\$2,200	\$2,200	\$5,500	\$5,500
6	\$1,100	\$2,200	\$2,200	\$5,500	\$5,500
7	\$1,100	\$2,200	\$2,200	\$5,500	\$5,500
8	\$1,100	\$2,200	\$2,200	\$5,500	\$5,500
9	\$1,100	\$2,200	\$2,200	\$5,500	\$5,500
10	\$1,100	\$2,200	\$2,200	\$5,500	\$5,500
11	\$1,400	\$2,600	\$2,600	\$6,000	\$6,000
12	\$1,700	\$3,000	\$3,000	\$6,500	\$6,500
13	\$2,000	\$3,500	\$3,500	\$7,000	\$7,000
14	\$2,500	\$4,000	\$4,000	\$7,500	\$7,500
15	\$3,000	\$4,500	\$4,500	\$8,000	\$8,000
16	\$3,500	\$5,000	\$5,000	\$8,500	\$8,500
17	\$4,000	\$5,500	\$5,500	\$9,000	\$9,000
18	\$4,500		\$6,500		\$10,000
20	\$5,000				

1.4.17.19 Illustration E-5: Most Commonly Cited Violations w/Enforcement

Most Commonly Cited Violations w/Enforcement

Violation	Recommended Gravity for Enforcement Violations
Part 382	
382.115	Violation is unlikely to cause or contribute to an accident
382.215	Violation which could reasonably cause/contribute to accident
382.301	Violation is unlikely to cause or contribute to an accident
382.303	Violation is unlikely to cause or contribute to an accident
382.305	Violation is unlikely to cause or contribute to an accident
382.305i	Violation is unlikely to cause or contribute to an accident
Part 383*	
383.23a	Violation which could reasonably cause/contribute to accident
383.37a	Violation which could reasonably cause/contribute to accident
383.51a	Violation which could reasonably cause/contribute to accident
	*For Violations of Part 383, we should ask the questions: <ul style="list-style-type: none"> • Why is the drivers CDL invalid, suspended?

	<ul style="list-style-type: none"> • Why is the driver disqualified? <p>If the reason is non-safety related, the Recommended UFA Gravity will be, "Violation is unlikely to cause or contribute to an accident."</p>
Part 387	
387.7a	Violation is unlikely to cause or contribute to an accident
387.7d	Violation is unlikely to cause or contribute to an accident
Part 391	
391.11a	Violation which could reasonably cause/contribute to accident
391.11b1	Violation which could reasonably cause/contribute to accident
391.11b4	Violation which could reasonably cause/contribute to accident
391.15a	Violation which could reasonably cause/contribute to accident
391.15a	Violation is unlikely to cause or contribute to an accident (non-safety related)
391.45a	Violation is unlikely to cause or contribute to an accident
391.45b	Violation is unlikely to cause or contribute to an accident
391.51a	Violation is unlikely to cause or contribute to an accident
391.51b7	Violation is unlikely to cause or contribute to an accident
Part 395	
395.3a1	Violation which could reasonably cause/contribute to accident
395.3a2	Violation which could reasonably cause/contribute to accident
395.3b1	Violation which could reasonably cause/contribute to accident
395.3b2	Violation which could reasonably cause/contribute to accident
395.8a	Violation is unlikely to cause or contribute to an accident
395.8e	Violation which could reasonably cause/contribute to accident
395.8k1	Violation is unlikely to cause or contribute to an accident
Part 396	
396.3a1	Violation which could reasonably cause/contribute to accident
396.7a	Violation which could reasonably cause/contribute to accident
396.9c2	Violation which could reasonably cause/contribute to accident
396.11a	Violation is unlikely to cause or contribute to an accident
396.17a	Violation is unlikely to cause or contribute to an accident

Keep in mind...This list is subject to additional violations as they are included in enforcement reports. And of course, if an accident has occurred, Gravity will always be: Violation which caused or contributed to an accident.

1.4.17.20 Illustration E-6: Photographic Declaration

PHOTOGRAPHIC DECLARATION	
Date:	Location:
Carrier/Shipper:	USDOT#:
Vehicle Identification or Container/Packaging Specification #:	
<p>My name is _____. I am currently employed as a [title] in the Federal Motor Carrier Safety Administration's [location] office.</p> <p>On [date], in the course and scope of my employment, I investigated a [type of investigation] involving [name of carrier].</p> <p>I took the photograph(s) attached to Exhibit A of this declaration. Exhibit A identifies each photograph and contains a complete description of what the photograph depicts, the date and time each photograph was taken, and the file name for each photograph (if digital).</p> <p>I am familiar with the scene and the photograph(s) accurately depict(s) the scene at the time and place the photograph(s) was/were taken.</p>	
Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.	
Executed on:	Investigator's Name:

1.4.17.21 Illustration E-7: Statement of Charges**STATEMENT OF CHARGES****Section Number: 107.620(b)**

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle transporting «PROPER SHIPPING NAME & CLASS», a hazardous material, in interstate commerce from «ORIGIN» to «DESTINATION» without having on board the vehicle a copy of the Hazardous Materials Certificate of Registration issued by the Research and Special Programs Administration.

Section Number: 172.202(a)

Charge Introduction: On or about «DATE», «SHIPPER_NAME » offered «PROPER SHIPPING NAME & CLASS», a hazardous material, for transportation from «ORIGIN» to «DESTINATION». The shipment was not accompanied by a properly prepared shipping paper.

Section Number: 173.24(b)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle transporting «PROPER SHIPPING NAME & CLASS», a hazardous material, in interstate commerce from «ORIGIN» to

«DESTINATION». During this transportation the hazardous material leaked from the packaging.

Section Number: 177.800(c)

Charge Introduction: On or about «DATE», «CARRIER» transported «SPECIFY MATERIAL», a hazardous material, in interstate commerce from «ORIGIN» to «DESTINATION», without adequately training «NAME», a hazmat employee who «TYPE OF HAZMAT ACTIVITY PERFORMED BY THIS PERSON». The carrier failed to provide General Awareness/Familiarization Training pursuant to § 172.704(a)(1).

Section Number: 177.800(c)

Charge Introduction: On or about «DATE», «CARRIER» transported «SPECIFY MATERIAL», a hazardous material, in interstate commerce from «ORIGIN» to «DESTINATION», without adequately training «NAME», a hazmat employee who «TYPE OF HAZMAT ACTIVITY PERFORMED BY THIS PERSON». The carrier failed to provide Function Specific Training pursuant to § 172.704(a)(2).

Section Number: 177.800(c)

Charge Introduction: On or about «DATE», «CARRIER» transported «SPECIFY MATERIAL», a hazardous material, in interstate commerce from «ORIGIN» to «DESTINATION», without adequately training «NAME», a hazmat employee who «TYPE OF HAZMAT ACTIVITY PERFORMED BY THIS PERSON». The carrier failed to provide Safety Training pursuant to § 172.704(a)(3).

Section Number: 177.800(c)

Charge Introduction: On or about «DATE», «CARRIER» transported «SPECIFY MATERIAL», a hazardous material, in interstate commerce from «ORIGIN» to «DESTINATION», without adequately training «NAME», a hazmat employee who «TYPE OF HAZMAT ACTIVITY PERFORMED BY THIS PERSON». The carrier failed to provide Initial Training pursuant to § 172.704(c)(1).

Section Number: 177.800(c)

Charge Introduction: On or about «DATE», «CARRIER» transported «SPECIFY MATERIAL», a hazardous material, in interstate commerce from «ORIGIN» to «DESTINATION», without adequately training «NAME», a hazmat employee who «TYPE OF HAZMAT ACTIVITY PERFORMED BY THIS PERSON». The carrier failed to provide Recurrent Training pursuant to § 172.704(c)(2).

Section Number: 177.800(c)

Charge Introduction: On or about «DATE», «CARRIER» transported «SPECIFY MATERIAL», a hazardous material, in interstate commerce from «ORIGIN» to «DESTINATION», without adequately training «NAME», a hazmat employee who «TYPE OF HAZMAT ACTIVITY PERFORMED BY THIS PERSON». The carrier failed to provide Training in parts 390-397 and vehicle operations pursuant to § 177.816(a).

Section Number: 177.800(c)

Charge Introduction: On or about «DATE», «CARRIER» transported «SPECIFY MATERIAL», a hazardous material, in interstate commerce from «ORIGIN» to «DESTINATION», without adequately training «NAME», a hazmat employee who «TYPE OF HAZMAT ACTIVITY PERFORMED BY THIS PERSON». The carrier failed to provide Cargo Tank and Portable Tank training pursuant to § 177.816(b).

Section Number: 177.817(a)

Charge Introduction: On or about «DATE», «CARRIER» transported «SPECIFY MATERIAL», a hazardous material, in commerce from «ORIGIN» to «DESTINATION», without a properly prepared hazardous materials shipping paper. The shipping paper failed to meet the requirements of «SPECIFY SECTION NUMBER(S) AND REASON(S)».

Section Number: 177.823(a)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle transporting «PROPER SHIPPING NAME & CLASS», a hazardous material, in interstate commerce from «ORIGIN» to «DESTINATION». The shipment was not properly marked or placarded.

Section Number: 177.834(a)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle transporting «PROPER SHIPPING NAME & CLASS», a hazardous material, in interstate commerce from «ORIGIN» to «DESTINATION». During this transportation the hazardous material was not properly secured against movement within the vehicle.

Section Number: 180.407(a)

Charge Introduction: On or about «DATE», «CARRIER» used «DRIVER'S NAME» to drive a commercial motor vehicle transporting «PROPER SHIPPING NAME & CLASS», a hazardous material in a cargo tank which had not been successfully tested or inspected. The shipment was transported in interstate commerce from «ORIGIN» to «DESTINATION».

Section Number: 180.417(a)(2)

Charge Introduction: On or about «DATE», «CARRIER» transported «SPECIFY QUANTITY AND MATERIAL», a hazardous material, in commerce from «ORIGIN» to «DESTINATION», in DOT specification «SPEC NUMBER» cargo tank «CARRIER ID #». On «COMPLIANCE REVIEW DATE», the carrier failed to retain the cargo tank manufacturer's data report certificate and

related papers for that cargo tank.

Section Number: 366

Charge Introduction: On or about «DATE», «CARRIER» provided or arranged for the transportation of «COMMODITY» from «ORIGIN» to «DESTINATION» and received compensation in the amount of «\$AMOUNT» for such service. At the time this transportation was provided or arranged, «CARRIER» did not have on file a Form BOC-3, Designation of Agent for Service of Process, with the Federal Motor Carrier Safety Administration.

Section Number: 382.115(a)

Charge Introduction: On or about «DATE», «CARRIER» used driver, «DRIVER'S NAME», to drive a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION». At the time of this transportation, «CARRIER» had not yet implemented an alcohol and/or controlled substances testing program.

Section Number: 382.211

Charge Introduction: On or about «DATE», «CARRIER» permitted its driver, «DRIVER'S NAME», to perform or continue to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», after the driver refused on «DATE OF REFUSAL» to submit to a post-accident alcohol test pursuant to § 382.303.

Section Number: 382.211

Charge Introduction: On or about «DATE», «CARRIER» permitted its driver, «DRIVER'S NAME», to perform or continue to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», after the driver refused on «DATE OF REFUSAL» to submit to a random alcohol test pursuant to § 382.305.

Section Number: 382.211

Charge Introduction: On or about «DATE», «CARRIER» permitted its driver, «DRIVER'S NAME», to perform or continue to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», after the driver refused on «DATE OF REFUSAL» to submit to a reasonable suspicion alcohol test pursuant to § 382.307.

Section Number: 382.211

Charge Introduction: On or about «DATE», «CARRIER» permitted its driver, «DRIVER'S NAME», to perform or continue to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», after the driver refused on «DATE OF REFUSAL» to submit to a follow-up alcohol test pursuant to § 382.311.

Section Number: 382.211

Charge Introduction: On or about «DATE», «CARRIER» permitted its driver, «DRIVER'S NAME», to perform or continue to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», after the driver refused on «DATE OF REFUSAL» to submit to a post-accident controlled substances test pursuant to § 382.303.

Section Number: 382.211

Charge Introduction: On or about «DATE», «CARRIER» permitted its driver, «DRIVER'S NAME», to perform or continue to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», after the driver refused on «DATE OF REFUSAL» to submit to a random controlled substances test pursuant to § 382.305.

Section Number: 382.211

Charge Introduction: On or about «DATE», «CARRIER» permitted its driver, «DRIVER'S NAME», to perform or continue to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», after the driver refused on «DATE OF REFUSAL» to submit to a reasonable suspicion controlled substances test pursuant to § 382.307.

Section Number: 382.211

Charge Introduction: On or about «DATE», «CARRIER» permitted its driver, «DRIVER'S NAME», to perform or continue to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», after the driver refused on «DATE OF REFUSAL» to submit to a follow-up controlled substances test pursuant to § 382.311.

Section Number: 382.215

Charge Introduction: On or about «DATE», «CARRIER» permitted its driver, «DRIVER'S NAME», to perform or continue to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», when the carrier had actual knowledge that the driver had tested positive for controlled substances. The driver tested positive for «SPECIFY DRUG» on «DATE OF POSITIVE RESULT», and the carrier was notified of the positive test results on «DATE OF NOTIFICATION».

Section Number: 382.301(a)

Charge Introduction: On or about «DATE», «CARRIER» allowed its driver, «DRIVER'S NAME», to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», before the carrier received a negative pre-employment controlled substances test result.

Section Number: 382.303(a)

Charge Introduction: On or about «DATE», «CARRIER» used driver, «DRIVER'S NAME», to drive a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION». During the performance of this safety sensitive function, the driver was involved in an accident which required post-accident testing for alcohol pursuant to 382.303. «CARRIER» did not have «DRIVER'S NAME» post-accident tested for alcohol, as required.

Section Number: 382.303(b)

Charge Introduction: On or about «DATE», «CARRIER» used driver, «DRIVER'S NAME», to drive a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION». During the performance of this safety sensitive function, the driver was involved in an accident which required post-accident testing for controlled substances pursuant to 382.303. «CARRIER» did not have «DRIVER'S NAME» post-accident tested for controlled substances, as required.

Section Number: 382.305

Charge Introduction: On or about «DATE», «CARRIER» used driver, «DRIVER'S NAME», to drive a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION». At the time of this transportation, «CARRIER», had not yet implemented a random controlled substances testing program.

Section Number: 382.305

Charge Introduction: On or about «DATE», «CARRIER» used driver, «DRIVER'S NAME», to drive a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION». At the time of this transportation, «CARRIER» had not implemented a random alcohol testing program.

Section Number: 382.305(b)(1)

Charge Introduction: In calendar year «YEAR», «CARRIER» operated commercial motor vehicles in commerce and had an average of «NUMBER» driver positions. The carrier was required to randomly test for alcohol «NUMBER REQUIRED» drivers. The carrier tested «NUMBER TESTED» driver(s).

Section Number: 382.305(b)(2)

Charge Introduction: In calendar year «YEAR», «CARRIER» operated commercial motor vehicles in commerce and had an average of «NUMBER» driver positions. The carrier was required to randomly test for controlled substances «NUMBER REQUIRED» drivers. The carrier tested «NUMBER TESTED» driver(s).

Section Number: 382.305(i)

Charge Introduction: In calendar year «YEAR», «CARRIER» operated commercial motor vehicles in commerce and was required to have a random alcohol and controlled substance testing program. The selection of drivers tested under this program was not made by the required scientifically valid method.

Section Number: 382.503

Charge Introduction: On or about «DATE», «CARRIER» used driver, «DRIVER'S NAME», to operate a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION». At the time of this transportation driver «DRIVER'S NAME» had not been evaluated by a substance abuse professional after having engaged in conduct prohibited by subpart B.

Section Number: 383.23(a)(2)

Charge Introduction: On or about «DATE», driver, «DRIVER'S NAME», operated a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», without a valid commercial driver's license. The license was not valid because «STATE REASON(S)».

Section Number: 383.37(a)

Charge Introduction: On or about «DATE», «CARRIER» knowingly allowed, required, permitted, or authorized its driver, «DRIVER'S NAME», to operate a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», when that driver's commercial motor vehicle driver's license had been suspended by the State of «STATE» on «DATE OF SUSPENSION».

Section Number: 383.37(a)

Charge Introduction: On or about «DATE», «CARRIER» knowingly allowed, required, permitted, or authorized its driver, «DRIVER'S NAME», to operate a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», when that driver's commercial motor vehicle driver's license had been revoked by the State of «STATE» on «DATE OF REVOCATION».

Section Number: 383.37(a)

Charge Introduction: On or about «DATE», «CARRIER» knowingly allowed, required, permitted, or authorized its driver, «DRIVER'S NAME», to operate a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», when that driver's commercial motor vehicle driver's license had been canceled by the State of «STATE» on «DATE OF CANCELLATION».

Section Number: 383.37(b)

Charge Introduction: On or about «DATE», «CARRIER» knowingly allowed, required, permitted, or authorized its driver, «DRIVER'S NAME», to operate a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», when that driver had commercial motor vehicle driver's licenses from the States of «STATE» and «STATE».

Section Number: 383.51(a)

Charge Introduction: On or about «DATE», «CARRIER» knowingly allowed, required, permitted, or authorized its driver, «DRIVER'S NAME», to operate a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION», when that driver had been disqualified to operate a commercial motor vehicle by the State of «STATE» on «DATE OF DISQUALIFICATION».

Section Number: 383.93

Charge Introduction: On or about «DATE», «CARRIER» knowingly allowed, required, permitted, or authorized its driver, «DRIVER'S NAME», to operate a commercial motor vehicle in commerce from «ORIGIN» to «DESTINATION» without the proper endorsement on the commercial driver's license. The license did not contain an endorsement for «REQ'D ENDORSMENT».

Section Number: 383.93(b)(4)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle transporting hazardous materials in interstate commerce from «ORIGIN» to «DESTINATION». At the time of this transportation driver «DRIVER'S NAME» did not have a hazardous materials endorsement on his commercial driver's license.

Section Number: 385.13(1) or (2)

Charge Introduction: On or about «DATE», «CARRIER» operated a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». The carrier's "unsatisfactory" safety rating was effective on «EFFECTIVE DATE», and an Out of Service Order was served on the carrier on «SERVED DATE».

Section Number: 387.7(a)

Charge Introduction: On or about «DATE», «CARRIER» operated a commercial motor vehicle with a gross vehicle weight rating of 10,000 pounds or more and transported property in interstate commerce for compensation from «ORIGIN» to «DESTINATION», without having in effect \$750,000 public liability insurance.

Section Number: 387.7(a)

Charge Introduction: On or about «DATE», «CARRIER» transported «SPECIFY QUANTITY AND MATERIAL», a hazardous material, in commerce from «ORIGIN» to «DESTINATION», without having in effect \$«AMOUNT» public liability insurance.

Section Number: 387.7(a)

Charge Introduction: On or about «DATE», «CARRIER» transported «SPECIFY QUANTITY AND MATERIAL», a hazardous substance, in commerce from «ORIGIN» to «DESTINATION», without having in effect \$«AMOUNT» public liability insurance.

Section Number: 387.7(a)

Charge Introduction: On or about «DATE», «CARRIER» transported «SPECIFY QUANTITY AND MATERIAL», a hazardous waste, in commerce from «ORIGIN» to «DESTINATION», without having in effect \$«AMOUNT» public liability insurance.

Section Number: 387.31(a)

Charge Introduction: On or about «DATE», «CARRIER» transported passengers in interstate commerce for compensation in a vehicle with a seating capacity of 16 passengers or more from «ORIGIN» to «DESTINATION», without having in effect \$5,000,000 public liability insurance.

Section Number: 387.31(a)

Charge Introduction: On or about «DATE», «CARRIER» transported passengers in interstate commerce for compensation in a vehicle with a seating capacity of 15 passengers or less from «ORIGIN» to «DESTINATION», without having in effect \$1,500,000 public liability insurance.

Section Number: 387.301(a)

Charge Introduction: On or about «DATE», «CARRIER» provided or arranged for the transportation of «COMMODITY» from «ORIGIN» to «DESTINATION» and received compensation in the amount of «\$AMOUNT» for such service. At the time this transportation was provided or arranged, «CARRIER» did not have evidence of public liability insurance on file with the Federal Motor Carrier Safety Administration.

Section Number: 387.301(b)

Charge Introduction: On or about «DATE», «CARRIER» provided or arranged for the transportation of «COMMODITY» from «ORIGIN» to «DESTINATION» and received compensation in the amount of «\$AMOUNT» for such service. At the time this transportation was provided or arranged, «CARRIER» did not have evidence of cargo insurance on file with the Federal Motor Carrier Safety Administration.

Section Number: 387.303(b)(4)(i)

Charge Introduction: On or about «DATE», «CARRIER» transported «COMMODITY» from «ORIGIN», to «DESTINATION», and billed for transportation charges in the amount of «\$AMOUNT». At the time of this transportation, «CARRIER» did not have a copy of its Certificate of Registration in Docket No. MX-«MX NUMBER», issued by the Federal Motor Carrier Safety Administration, in the vehicle and available for inspection.

Section Number: 387.303(b)(4)(i)

Charge Introduction: On or about «DATE», «CARRIER» transported «COMMODITY» in private carriage from «ORIGIN» to «DESTINATION». At the time of this transportation, «CARRIER» did not have a copy of its Certificate of Registration in Docket No. MX-«MX NUMBER», issued by the Federal Motor Carrier Safety Administration, in the vehicle and available for inspection.

Section Number: 387.307(a)

Charge Introduction: On or about «DATE», «CARRIER» provided or arranged for the transportation of «COMMODITY» from «ORIGIN» to «DESTINATION» and received compensation in the amount of «\$AMOUNT» for such service. At the time this transportation was provided or arranged, «CARRIER» did not have in effect a surety bond or trust fund agreement in the amount of \$10,000.

Section Number: 387.307(b)

Charge Introduction: On or about «DATE», «CARRIER» provided or arranged for the transportation of «COMMODITY» from «ORIGIN» to «DESTINATION» and received compensation in the amount of «\$AMOUNT» for such service. At the time this transportation was provided or arranged, «CARRIER» did not have evidence of a surety bond or trust fund agreement in the amount of \$10,000 on file with the Federal Motor Carrier Safety Administration.

Section Number: 391.11(b)(1)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». At the time of this transportation driver «DRIVER'S NAME» was under the age of 21 years

Section Number: 391.11(b)(6)

Charge Introduction: On or about «DATE», «CARRIER» required or permitted its driver, «DRIVER'S NAME», to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION», when that driver was not physically qualified to drive. The driver was not physically qualified because «STATE REASONS(S) FROM § 391.41(b)».

Section Number: 391.15(a)

Charge Introduction: On or about «DATE», «CARRIER» required or permitted its driver, «DRIVER'S NAME», to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION», when that driver was disqualified to drive. The driver was disqualified because «STATE REASONS(S)».

Section Number: 391.23(a)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». At the time of this transportation the carrier had not made the required inquiries into the driver's driving record during the preceding 3 years to the appropriate agency of every State in which the driver held a motor vehicle operator's license or permit during those 3 years

Section Number: 391.45(b)(1)

Charge Introduction: On or about «DATE», «CARRIER» required or permitted its driver, «DRIVER'S NAME», to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». At the time of this transportation, «DRIVER'S NAME» had not been physically reexamined with the past 24 months.

Section Number: 391.51(a)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». At the time of this transportation the carrier did not maintain a qualification file for the driver «DRIVER'S NAME».

Section Number: 392.5(a)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to operate a «VEHICLE_IDENTIFICATION» in commerce from «ORIGIN» to «DESTINATION». At the time of this transportation the driver had consumed alcohol within four hours of driving, was in possession of a prohibited alcoholic beverage or was under the influence of alcohol.

Section Number: 392.9(a)(1)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». At the time of this transportation the «DESCRIPTION OF CARGO» was not properly distributed and adequately secured.

Section Number: 393.42(a)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». At the time of this transportation «VEHICLE ID» was not equipped with brakes acting on all wheels. The vehicle did not have operable brakes on «IDENTIFY MISSING BRAKES».

Section Number: 395.3(a)(1)

Charge Introduction: On or about «DATE», «CARRIER» required or permitted its driver, «DRIVER'S NAME», to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION», more than 10 hours following 8 consecutive hours off duty. The driver drove «NUMBER» hours following 8 consecutive hours off duty.

Section Number: 395.3(a)(2)

Charge Introduction: On or about «DATE», «CARRIER» required or permitted its driver, «DRIVER'S NAME», to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION», after the driver had been on duty 15 hours following 8 consecutive hours off duty. The driver drove «NUMBER» hours after being on duty 15 hours.

Section Number: 395.3(b)(1)

Charge Introduction: On or about «DATE», «CARRIER» required or permitted its driver, «DRIVER'S NAME», to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION», after the driver had been on duty for 60 hours in 7 consecutive days. The driver drove «NUMBER» hours after being on duty for 60 hours.

Section Number: 395.3(b)(2)

Charge Introduction: On or about «DATE», «CARRIER» required or permitted its driver, «DRIVER'S NAME», to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION», after the driver had been on duty for 70 hours in 8 consecutive days. The driver drove «NUMBER» hours after being on duty for 70 hours.

Section Number: 395.8(a)

Charge Introduction: On or about «DATE», «CARRIER», used driver, «DRIVER'S NAME», to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION», without requiring the driver to prepare a record of duty status for that date.

Section Number: 395.8(e)

Charge Introduction: On or about «DATE», «CARRIER» used driver, «DRIVER'S NAME», to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». The driver made a false report of duty activities on the record of duty status for that date. The driver's record of duty status is false because «STATE REASON(S)».

Section Number: 395.8(f)

Charge Introduction: On or about «DATE», «CARRIER» used driver, «DRIVER'S NAME», to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». The driver's records of duty status for this trip were not prepared in the form and manner prescribed.

Section Number: 395.8(k)(1)

Charge Introduction: On or about «DATE», «CARRIER» used driver, «DRIVER'S NAME», to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». The carrier failed to preserve the driver's record of duty status for that date for a period of 6 months.

Section Number: 395.8(k)(1)

Charge Introduction: On or about «DATE», «CARRIER» used driver, «DRIVER'S NAME», to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». The carrier failed to preserve the driver's supporting documents for the record of duty status for that date for a period of 6 months. The following supporting documents were not maintained «LIST DOCUMENTS».

Section Number: 395.8(k)(2)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». At the time of this transportation driver «DRIVER'S NAME», failed to have in possession copies of records of duty status for the previous 7 consecutive days.

Section Number: 396.3(a)(1)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». At the time of this transportation «CARRIER» failed to inspect and maintain «VEHICLE_IDENTIFICATION» to ensure it was in safe and proper operating condition. «DESCRIBE_VIOLATION».

Section Number: 396.3(b)(3)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». At the time of this transportation «CARRIER» failed to maintain a record of inspection, repair and maintenance for «VEHICLE_IDENTIFICATION»

Section Number: 396.7(a)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to operate a «VEHICLE_IDENTIFICATION» in foreign commerce from «ORIGIN» to «DESTINATION». At the time of this transportation the vehicle was in such condition as to likely breakdown or cause an accident. The following serious defects were discovered during the driver/vehicle inspection. «LIST SERIOUS DEFECTS»

Section Number: 396.9(c)(2)

Charge Introduction: On or about «DATE DECLARED OOS», motor vehicle «VEHICLE ID#», operated by «CARRIER» in interstate commerce from «ORIGIN» to «DESTINATION», was declared and marked "out of service." On or about «DATE OF SECONDARY MOVE», the carrier required or permitted its driver, «DRIVER'S NAME», to drive this motor vehicle before all repairs required by the "out of service notice" had been satisfactorily completed.

Section Number: 396.11(a)

Charge Introduction: On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION». At the time of this transportation driver «DRIVER'S NAME» failed to prepare a vehicle inspection report on the vehicle at the completion of the day's work.

Section Number: 396.17(a)

Charge Introduction: On or about «DATE», «CARRIER» operated commercial motor vehicle «VEHICLE ID» in interstate commerce from «ORIGIN» to «DESTINATION», which had not passed an inspection in accordance with § 396.17 during the preceding 12-month period.

Section Number: 13901

Charge Introduction: On or about «DATE», «CARRIER» transported «COMMODITY» in for-hire carriage from «ORIGIN» to «DESTINATION». At the time of this transportation, «CARRIER» was not registered with the Federal Motor Carrier Safety Administration.

Section Number: 13901

Charge Introduction: On or about «DATE», «CARRIER» transported «COMMODITY» in for-hire carriage from «ORIGIN» to «DESTINATION». This transportation was beyond the commercial zone «CARRIER» is authorized to serve in its Certificate of Registration in Docket No. MX-«MX NUMBER», issued by the Federal Motor Carrier Safety Administration.

Section Number: 13902(c)(4)(B)

Charge Introduction: On or about «DATE», «CARRIER» transported «COMMODITY» in private carriage from «ORIGIN» to «DESTINATION». At the time of this transportation, «CARRIER» was not registered with the Federal Motor Carrier Safety Administration.

Section Number: 13902(c)(4)(B)

Charge Introduction: On or about «DATE», «CARRIER» transported «COMMODITY» in private carriage from «ORIGIN» to «DESTINATION». This transportation was beyond the commercial zone «CARRIER» is authorized to serve in its Certificate of Registration in Docket No. MX-«MX NUMBER», issued by the Federal Motor Carrier Safety Administration.

Section Number: 13902(c)(4)(B)

Charge Introduction: On or about «DATE», «CARRIER» transported «EXEMPT COMMODITY» in for-hire carriage from «ORIGIN» to «DESTINATION». At the time of this transportation, «CARRIER» was not registered with the Federal Motor Carrier Safety Administration.

Section Number: 13902(c)(4)(B)

Charge Introduction: On or about «DATE», «CARRIER» transported «EXEMPT COMMODITY» in for-hire carriage from «ORIGIN» to «DESTINATION». This transportation was beyond the commercial zone «CARRIER» is authorized to serve in its Certificate of Registration in Docket No. MX-«MX NUMBER», issued by the Federal Motor Carrier Safety Administration.

Section Number: 14708

Charge Introduction: On or about «DATE», «CARRIER» provided or arranged for the transportation of «COMMODITY» from «ORIGIN» to «DESTINATION» and received compensation in the amount of «\$AMOUNT» for such service. At the time this transportation was provided or arranged, «CARRIER» did not have in effect a dispute settlement program to settle disputes concerning damage or loss to household goods transported.

1.4.17.22 Illustration E-8: Written Statement with Perjury Clause

SIGNED STATEMENT OF _____

I, _____ (name), _____ (title), voluntarily give the following statement to _____ (investigator name), who has identified himself/herself as a Special Agent for the U.S. Department of Transportation, Federal Motor Carrier Safety Administration. No threats or promises have been made to me in exchange for this statement.

Narrative:

I have read the foregoing statement consisting of ___ page(s). It is true, accurate and complete to the best of my knowledge. I reviewed any changes and they bear my initials. **I sign this statement under penalty of perjury and in the presence of _____ [SI's name].**

Witness'/Interviewee's signature

Date

I certify that I prepared and took the above statement and that it is a complete and accurate summary of my interview with the witness.

Safety Investigator's signature

Date

1.4.17.23 Illustration E-9: Oral Interview Form

Download PDF Form:

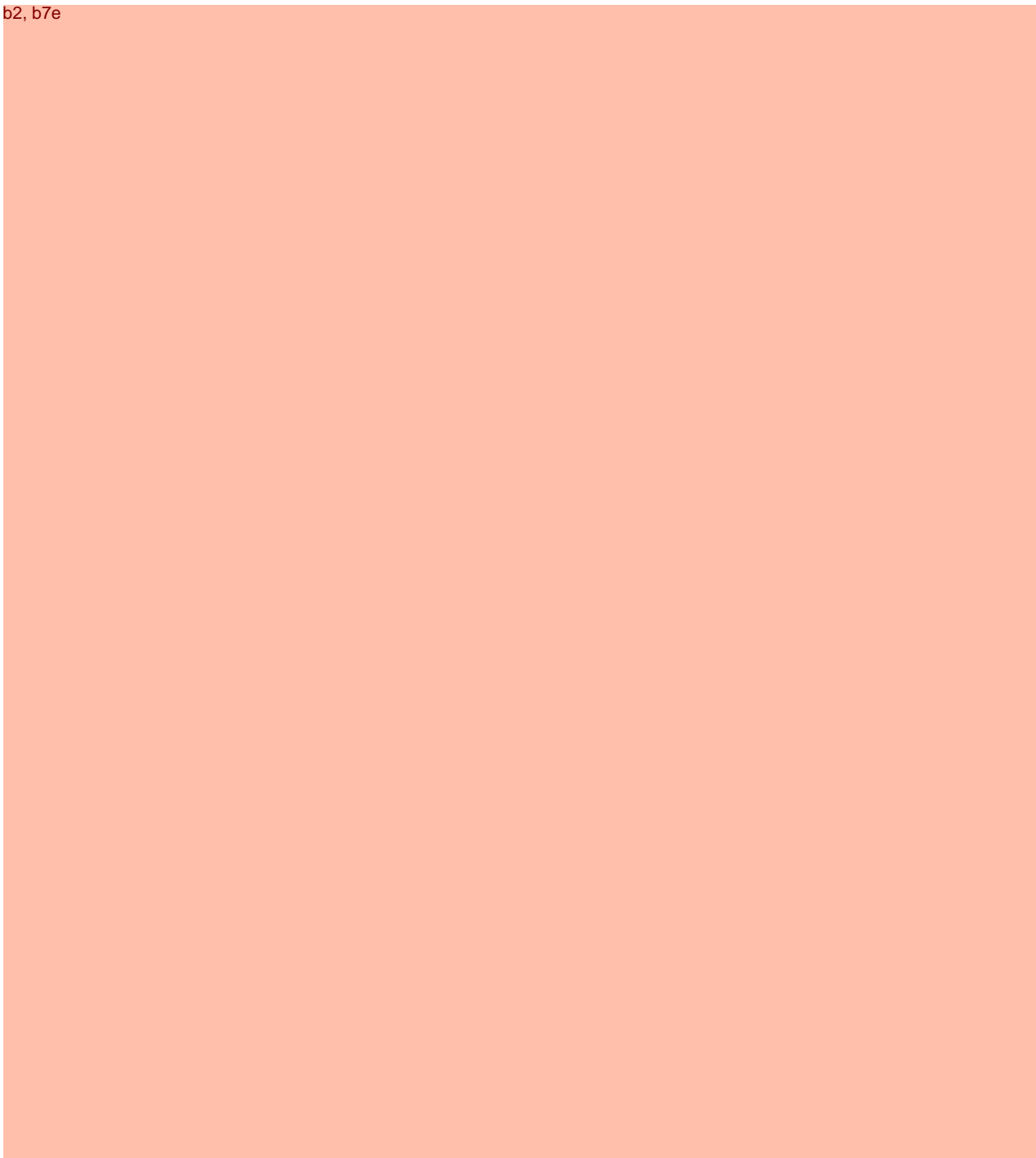
The Oral Interview Form has been created as a PDF that can be filled out on the computer.

Oral Interview Form	Type of Contact <input type="checkbox"/> Telephone <input type="checkbox"/> Personal	Date
Place of Interview		
Interviewee's Name	Interview's Address	
Name and Title of Person Interviewed		
Narrative		

I, _____ [SI's Name] declare, under penalty of perjury, that the information contained in this statement is a true and accurate summary of all relevant matters discussed with the witness on _____ [Date.]				
Safety Investigator's			Date	

b2, b7e

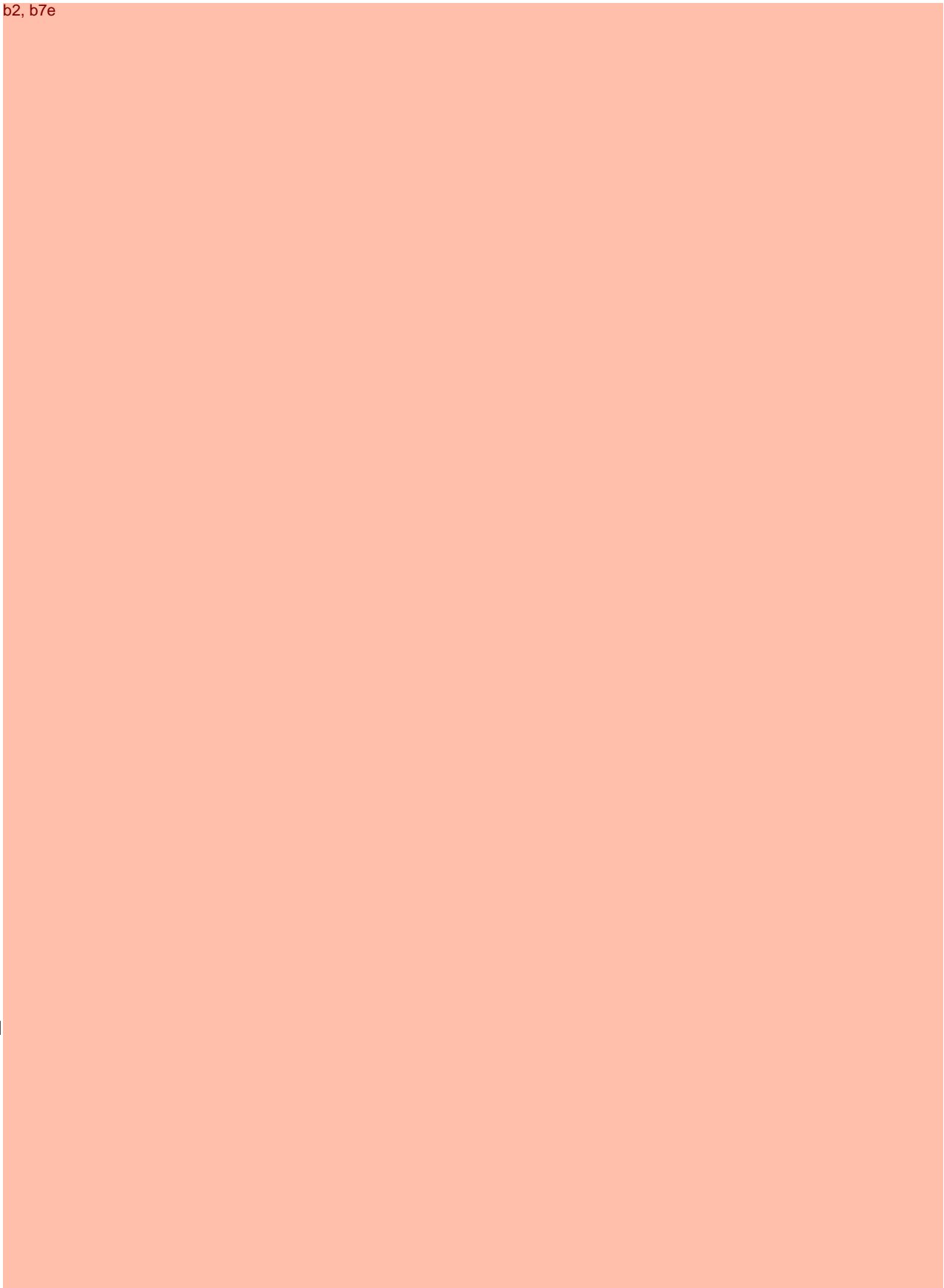
1.4.1



b2, b7e



b2, b7e



1.4.18.1

b2, b7e



b2, b7e



1.4.18.2 Illustration SACN-2

AUTOMATIC RENDERING

This handy guide outlines the procedures to be used to automatically render a PDF version of a CR or SA to EDMS. It will cover the following steps in the automatic rendering process:

- Rendering a PDF version of a CR or SA to EDMS
- Making a change to a CR or SA after it has been uploaded to MCMIS
- Making a change to a CR or SA after it has been approved in MCMIS and automatically rendered to EDMS
- Printing, viewing on screen, or printing to a file a CR or SA and the data in the CR or SA has not changed
- Uploading a CR or SA to MCMIS
- Retaining paper originals of the documents stored in EDMS

How do I render a PDF version of a CR or SA to EDMS?

The process to render a PDF version of a CR or SA to EDMS follows.

The CR or SA is completed.

?

Reports (Parts A, B, and Recommendations) are printed.

?

The Review Receipt Page is printed.

?

A PDF is automatically generated of Parts A, B, and Recommendations.

?

Part C is printed. A “printing window” will appear after the Review Receipt Page and Part C are printed, viewed on screen, or printed to a file (see example below).

b2, b7e



A PDF is automatically generated of Part C.

?

The PDF versions of Parts A, B, Recommendations, and C of the CR or SA are uploaded to MCMIS. This is an automatic process.

?

The CR or SA is approved in MCMIS (see example below).

b2, b7e



The CR or SA is automatically sent to EDMS (see example below).

b2, b7e



?

A link to the document is created in MCMIS (see example below).

b2, b7e



?

The safety investigator or auditor scans the Review Receipt Page into EDMS.

What procedures should I follow if I need to make a change to a CR or SA after it has been uploaded to MCMIS?

Once a CR or SA has been uploaded to MCMIS and you discover you need to make a change, you should adhere to the following procedures.

The safety investigator or auditor makes the appropriate change(s) to the CR or SA in CAPRI. The safety investigator or auditor must provide a corrected copy of the CR or SA to the carrier.

?

Reports (Parts A, B, and Recommendations, if they were changed) are printed.

?

The Review Receipt Page is printed.

?

The message "Is this an amended review/audit?" will appear.

?

You should answer "Yes" at this time (see example below). This will generate a new report.

b2, b7e



?

A PDF is automatically generated of Parts A, B, and Recommendations.

?

Part C is printed.

?

A PDF is automatically generated of Part C.

?

The PDF versions of Parts A, B, Recommendations, and C of the CR or SA are uploaded to MCMIS. This is an automatic process.

?

The CR or SA is approved in MCMIS.

?

The CR or SA is automatically sent to EDMS.

?

Two documents are now in EDMS, the earlier version (the first document listed) and the later version (the second document listed). See example below.

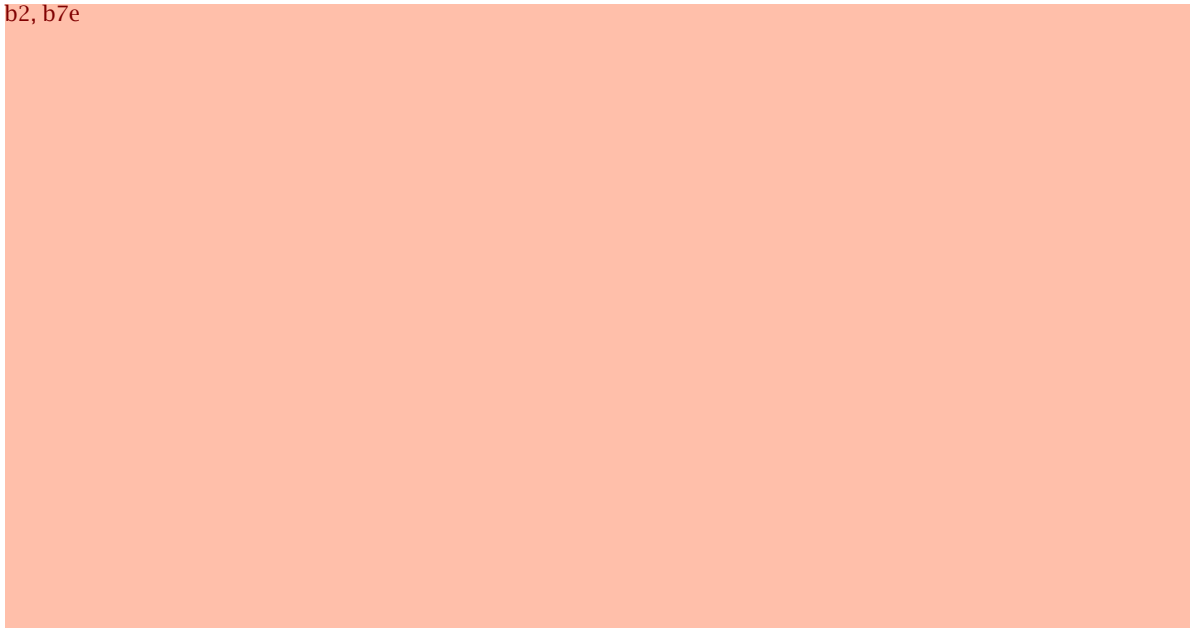
b2, b7e



?

One link to the document is created in MCMIS. The second version will open from this link (see example below).

b2, b7e



?

The safety investigator or auditor scans the Review Receipt Page into EDMS.

What procedures should I follow if I need to make a change to a CR or SA after it has been approved in MCMIS and automatically rendered to EDMS?

Once a CR or SA has been approved in MCMIS and automatically rendered to EDMS and you discover you need to make a change, you should adhere to the following procedures for either modifying the compliance review data (STEP 1) or deleting a CR or SA in order to upload the correct review or audit (STEP 2).

STEP 1 - MODIFICATIONS

The safety investigator consults with his or her Division Administrator and/or his Field Administrator or his designee to determine whether the compliance review should be modified or deleted. **NOTE:** Safety audits cannot be modified.

?

If it is determined that the CR should be modified, the safety investigator makes the appropriate changes in CAPRI and provides a corrected copy of the CR to the motor carrier.

?

The corrected version of the CR or a detailed list of modifications is forwarded to the FA or his designee to modify the CR in MCMIS.

?

Once the changes are made in MCMIS, the safety investigator must manually scan the CR into EDMS.

?

There will be two versions of the CR in EDMS (see below).

b2, b7e



Only one link to the document will be in MCMIS. The first version will open from this link (see example below). MCMIS only creates a link from EDMS if the CR or SA is automatically rendered. Links in MCMIS are not created from documents that are scanned into EDMS.

b2, b7e



?

The safety investigator scans the Review Receipt Page into EDMS.

STEP 2 - DELETIONS

The safety investigator consults with his or her Division Administrator and/or his Field Administrator or his designee to determine whether the compliance review should be modified or deleted.

?

If it is determined that CR or SA should be deleted, the safety investigator or auditor forwards his or her data change request to his or her Division Administrator (DA) or his or her designee. The data change request should explain the error and indicate that the CR or SA needs to be deleted from MCMIS. If the data change request is for an SA, the auditor must complete a Data Change Request Form. Data Change Request Forms can be obtained from the KnowZone or Infosys web site.

?

The DA approves the data change request or the Data Change Request Form and forwards to the Field Administrator (FA) or his designee for action.

?

The FA or his designee concurs with the DA's approval and initiates the deletion of the incorrect CR or SA from MCMIS.

?(for CRs)

The FA or his designee will delete the review from MCMIS. This will allow the safety investigator to upload the corrected review.

- OR -

?(for SAs)

The FA or his designee forwards the Data Change Request Form to FMCTechSup@volpe.dot.gov. Volpe will delete the SA from MCMIS, allowing the safety auditor to upload the corrected audit.

?

The safety investigator or auditor should now follow the instructions under the "How do I render a PDF version of a CR or SA to EDMS" section to upload the corrected review. The

safety investigator or auditor must provide a corrected copy of the CR or SA to the carrier.
?

NOTE: After the safety investigator or auditor uploads the corrected review, there will be two versions of the CR or SA in EDMS.

What procedures should I follow if I print, view on the screen, or print to a file a CR or SA and the data in the CR or SA has not changed?

You should adhere to the following procedures if you print, view on the screen, or print to a file a CR or SA and the data has not changed.

Reports (Parts A, B, and Recommendations, if they were changed) are printed, viewed on screen, or printed to a file.

?

The Review Receipt Page is printed.

?

The message "Is this an amended review/audit?" will appear.

?

You should answer "No" at this time (see example below). The previous rendered PDF file will be overwritten. This will not generate duplicate reviews in EDMS.

b2, b7e



A PDF is automatically generated of Parts A, B, and Recommendations.

?

Part C is printed.

?

A PDF is automatically generated of Part C.

?

The PDF versions of Parts A, B, Recommendations, and C of the CR or SA are uploaded to MCMIS. This is an automatic process.

?

The CR or SA is approved in MCMIS.

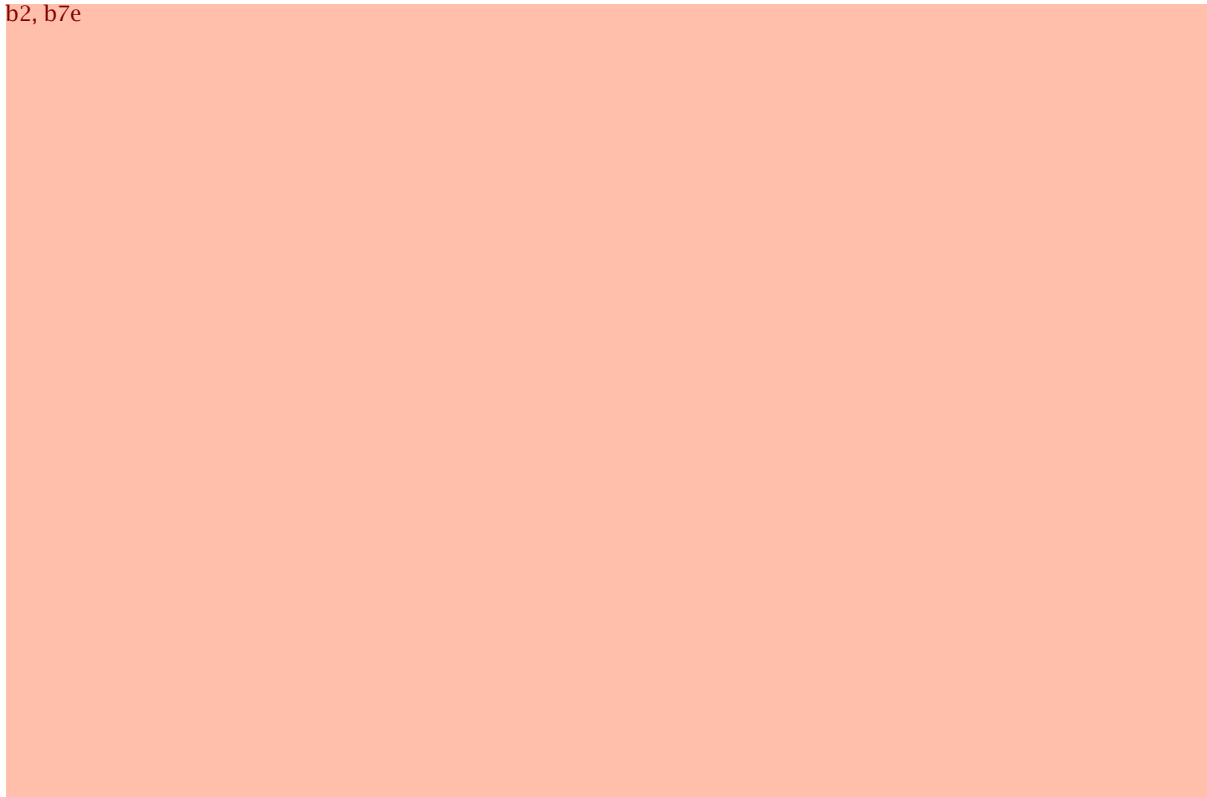
?

The CR or SA is automatically sent to EDMS.

?

One version of the document will remain in EDMS (see example below).

b2, b7e



What steps should I follow if I am unable to upload a CR or SA to MCMIS?

There will be instances when you will not be able to upload a CR or SA to MCMIS because of your travel status, issues with the information system, error messages, etc. You should adhere to the following procedures in the event you encounter these problems.

The safety investigator or auditor should contact Volpe for technical support.

?

For CRs: If Volpe is unable to assist because of network, system, communication, development issues, the safety investigator will be required to send (e.g., fax, mail, e-mail) a hard copy to his FA or his designee for manual entry.

For SAs: FMCSA does not have the ability to manually enter SAs into MCMIS. Therefore, the auditor will need to continue to work with technical support at Volpe until the issue is resolved. Once the issue is resolved, the auditor should follow the procedures under the

“How do I render a PDF version of a CR or SA to EDMS?” section to complete the automatic rendering process.

?

Once the CR is manually entered, the safety investigator must manually scan the CR into EDMS.

?

The safety investigator scans the Review Receipt Page into EDMS.

How long should I retain paper originals of the documents stored in EDMS?

Divisions should follow the Quality Assurance Procedures (Attachment C) of the EDMS Manual with regards to the retention of paper originals of documents stored in EDMS. The EDMS Manual states:

“It is imperative that paper originals of documents stored into EDMS are retained until a full backup cycle of EDMS has occurred.If no failure notification has been received by Wednesday afternoon, then the paper documents may be properly disposed.”

Added to eFOTM: 07/28/08

1.4.18.3 Illustration SACN-3

Quality Assurance Procedures

I. PURPOSE

An electronic document management system, when properly used, offers superior accessibility, storage, and retrieval of mission critical information.

This document outlines procedures to be used to safeguard the accuracy, quality and integrity of documents stored in the Federal Motor Carrier Safety Administration's Electronic Document Management System. These procedures will be used to defend the accuracy of documents utilized in regulatory and enforcement proceedings.

II. SCOPE

This document will cover Quality Control and Assurance procedures for preparing, scanning and indexing of Review and Enforcement documentation.

III. OVERVIEW

This document will cover the following steps in the document imaging process:

- Document Preparation
- Quality Control
- Document Indexing
- Quality Assurance

- Document Backups

An example of a typical scanning process will be outlined step by step.

IV. DOCUMENT PREPARATION

There will be two types of documents prepared for scanning into EDMS: those documents that are currently stored in paper format ("back-scanning") and documents prepared after implementation of EDMS.

a Back Scanning off existing documents-- Existing documents may utilize a variety of features that are not compatible with efficient document scanning- the documents were prepared without anticipation of the requirements for electronic scanning. Persons preparing existing documents for back-scanning should ensure the following:

1. Remove all paper clips and other fastenings
2. Place document pages into office standard sequential ordering
3. Repair or recopy damaged pages
4. Copy post-it notes containing pertinent information to full size sheets of paper and remove.
5. Examine highlighted areas for scan-ability- any color other than yellow will most likely scan as completely black, obscuring the highlighted text. Pages with dark highlighting should be flagged for grey-scale scanning.
6. Flag photos and color prints using temporary post-its or other means, for color scanning.
7. Copy non-standard paper types and sizes onto 8.5 X 11 inch standard letter sized paper.

b. Preparation off new documents, post-EDMS implementation -- Documents created after implementation of EDMS should take the needs of efficient scanning into consideration. Standard office procedures should be developed to minimize the amount of pre-processing required to scan a new document:

1. Do not use staples- paper clips or other quick release fasteners may be used, or simply avoid fastener use altogether in smaller documents.
2. Use standard sizes, weights, and type of paper only.
3. Document a standard sequential order for pages within scanned documents. (For example- Enforcement cover page, then UFA, then NOC, etc.)
4. Do not use post-it notes or highlighters on documents- in enforcement reports, such information should be outlined in exhibit abstracts. Light yellow highlighting may be used if compatible with your scanner.
5. Photocopies that may be difficult to scan (ex- very light copies, color photos or printouts) should be flagged using tabs or temporary post it notes for the attention of the person scanning.
6. The preferred method of imaging digital photos into the system is to store the images into the TIFF or other file directly, rather than printing and scanning the photos. For example,

utilize the "virtual printer" capability available in some scanning packages to print digital camera images directly into TIFF files, and then insert the TIFF images into a scanned case.

c. When to scan a document -- Most documents will be scanned after all Division level processing is completed- for example, enforcement reports should be scanned after the Notice of Claim is generated and mailed out, CR's and SA's after review and upload into MCMIS.

V. QUALITY CONTROL

The quality control process begins during the scanning of the document. The document page count and image quality will be verified at this time.

Kofax scanning solution:

a. Hardware and Software Standards -- If scanning with the Kofax solution, the scanner needs to be compliant with the recommended scanners that are certified by Kofax to be utilized in connection with the Ascent Capture 6.0 or higher. All other settings will be the same.

b. Page Count (to be done in the scanning phase) -- Scan like documents (CR's, Inspection Reports, Cases, etc.) in batches of whatever number the document feeder can handle. The only limitation to this process is the hardware feeder limit. As each batch is scanned, verify the page count as it increments in the scanning software. Note the total page count and attach to the document (after scanning) via post-it note, or other temporary note. If there is a problem with the scanning count, correct by inserting missing pages, or by rescanning the affected pages, after deleting the faulty pages.

c. Image quality (to be done in the scanning phase) -- To balance quality of images vs. file size, the scanner settings should be set to 300 DPI, black and white scanning (or "line-drawing"). Utilize grey-scale or color image scanning for pages flagged as potentially being a problem for standard black and white scanning. When possible, integrate digital camera images directly in the scanned document by using the virtual printer function.

d. Quality Assurance of documents (to be done in the Quality assurance phase) -- To balance quality of images vs. the original document, the user will view the document in the QA phase of the scanning process. The user can verify the document content and image quality during this phase. The user will verify the readability and image quality of each document by visually checking each document. If any pages are found to be faulty, the user will correct any problem pages by rescanning and replacing bad scans, or rescan the entire document. If a page is faulty due to problems with the paper original, adjust scanner settings to allow faithful reproduction and rescan (utilize grey-scale or color settings). This is normally handled by the Virtual Rescanning option if available on the scanner purchased.

e. Verification of Documents (done in Verification phase) -- As each scanned image is indexed into EDMS, verify that the correct file is being attached into EDMS by checking the USDOT number and document date, enforcement case number, or other unique identifier as documented by the Division office. This needs to be done for each individual document in the batch.

f. Accurate Index Values (done in Verification Phase) -- Scanned documents should be indexed by utilizing the original paper document as reference – as each set of index values

in entered, use the paper original for key values like USDOT number, Carrier Name, etc. As this step is now automated, the user must verify the information for each document before moving on to the next phase.

g. Next Steps -- Retain the paper documents for the Quality Assurance and the document backup steps.

Non-Kofax scanning solution:

a. Hardware and Software Standards -- At a minimum, scanning should be conducted on Twain compliant (scanner driver interface) scanner with a minimum scan image quality capability of 300 DPI. Scanner software should produce a standard multi-page TIFF format file with G4 compression, readable by standard graphics programs, including the Windows built in image viewer.

b. Page Count -- Scan documents in batches of 25 pages. As each batch is scanned, verify the page count as it increments in the scanning software. Note the total page count and attach to the document (after scanning) via post it note, or other temporary note. If there is a problem with the document count, correct by inserting missing pages, or by rescanning the last batch of 25 pages, after deleting the faulty batch.

c. Image quality -- To balance quality of images vs. file size, the scanner settings should be set to 300 DPI, black and white scanning (or "line-drawing"). Utilize grey-scale or color image scanning for pages flagged as potentially being a problem for standard black and white scanning. When possible, integrate digital camera images directly in the scanned document by using the virtual printer function available in some scanning programs. After feeding the document through the scanner, verify the readability and image quality of the document by visually checking the first, last, and 10 percent of the middle of the document. (For example, in a 50-page enforcement report, randomly check 5 pages in the body of the document, in addition to the first and last pages). If any pages are found to be faulty, the entire document should be verified. Correct any problem pages by rescanning and replacing bad scans, or rescan the entire document. If a page is faulty due to problems with the paper original, adjust scanner settings to allow faithful reproduction and rescan (utilize grey-scale or color settings).

VI. DOCUMENT INDEXING

EDMS utilizes a browser-based client that minimizes the amount of technical support necessary to enter and access scanned and electronic documents. The use of a browser client necessitates that documents are initially stored on a local or network disc, then later attached to a document index in EDMS. Steps must be taken to ensure that the correct document is attached to the corresponding index.

a. File Naming Convention -- All offices will adopt and document a standard directory structure and file name convention for temporary storage of scanned documents on local or shared network drives. For example, all CR's could be scanned to a directory named "EDMS_REVIEWS", and all enforcement reports to "EDMS_CASES". Compliance Reviews could be stored using a filename consisting of the Carrier USDOT number underscore Carrier Name underscore Review Date. (Ex-456998_Smith Trucking_09-09-2003.TIF) Enforcement reports would be saved using the full enforcement case number. (Ex: MI-2003-0128-US0405.TIF).

b. Verification of Documents - As each scanned image is indexed into EDMS, verify that the correct file is being attached into EDMS by checking the USDOT number and document date, enforcement case number, or other unique identifier as documented by the Division office.

c. Accurate Index Values - Scanned documents should be indexed by utilizing the original paper document as a reference- as each set of index values is entered, use the paper original for key values like USDOT number, Carrier Name, etc.

d. Next Steps -- Retain the paper documents for the Quality Assurance and document backup steps.

VIII. QUALITY ASSURANCE

The Quality Assurance process is a sampling procedure to verify the accuracy and completeness of the document scanning process. The quality assurance review will ensure that the document retains the proper page count, image legibility, and document index accuracy.

a. Utilize Paper Originals for Verification -- After documents have been scanned into TIFF files and indexed into EDMS, the originals will now be verified in EDMS for quality assurance. NOTE: the same individual that scanned the image and entered the document into EDMS can do this verification process. If the DA determines a second individual needs to perform this verification, the DA will assign an individual to do this.

b. Sampling procedure -- The Quality Assurance review will consist of a 25 percent sampling of CR's/SA's/other reviews and a 25 percent sampling of enforcement reports. (Example- if processing 6 completed CR's; the QA review will verify completeness, accuracy, and image quality for a minimum of $6 \times .25 = 1.5$, or 2 reviews.)

c. Verify Accuracy of Index Values -- Retrieve each sampled document from EDMS, and compare the index values as entered into EDMS against the values on the original paper document.

d. Page Count Verification -- The reviewer will note the page count of the document (see IV (B) above), and compare that against the scanned document by opening the document and verifying that the counts match (page count as indicated by the scanning software).

e. Image Quality Assurance -- The reviewer will review the first, last, and 10 percent of the middle of a document for image legibility, and retention of information.

f. Next Steps -- The reviewer will retain all paper originals until a complete backup cycle has been completed.

VIII. DOCUMENT BACKUPS

It is imperative that paper originals of documents stored into EDMS are retained until a full backup cycle of EDMS had occurred. EDMS will conduct incremental backups nightly, with a full backup cycle over the weekend. All documents scanned during a week should be kept until the following Wednesday. In the event of a backup system failure, notification will be sent out via email- hard copies of documents must be retained until such time as a full backup has been successfully achieved.

If no failure notification has been received by Wednesday afternoon, then the paper

documents may be properly disposed.

IX. A TYPICAL SCANNING CYCLE

The following is an example of process outlined above, as it would be conducted in a typical day-to-day operation.

- 1) An SI submits a paper enforcement report to the FPS.
- 2) The FPS reviews the report, and sends it back to the SI for a correction (1 dropped count).
- 3) The SI resubmits the corrected report.
- 4) The FPS approves the case report, prints a final Notice of Claim and Statement of Charges, and forwards the paper document to the DA for review and signature.
- 5) The DA signs the paper report, and forwards to the TA for mailing of the NOC.
- 6) The TA processes the report for scanning- removes paper clips, checks for any post-it notes or highlighting, and arranges the report in the correct order.
- 7) The TA counts off 25 pages, scans them, then 23 pages, and scans the remainder (of a 48 page report).
- 8) The TA checks the page count as reported by the scanning software and notes that it shows 48 pages, the correct page count.
- 9) The TA places a post-it on the paper report, and notes a page count of 48.
- 10) The TA opens up "Thumbnail" view and verifies that the first, last and 5 random middle pages (10 percent sampling) are clean scans, with no reproduction problems, by clicking and viewing each of the sampled pages.
- 11) The TA saves the report file to a shared network directory- H:\EDMS_CASES, utilizing the filename MI-2004-0011-US405.TIF.
- 12) The TA processes several CR's and Cases, following the Document Preparation and Quality Control Procedures.
- 13) After completing a batch of CRs and Cases, the TA logs in to EDMS and begins indexing the scanned files into storage.
- 14) The TA refers to the stack of processed and scanned paper CRs and Cases- as he or she moves each paper document from the scanned-but-not-indexed to the scanned-and-indexed stack, he or she uses the USDOT number, carrier name, and case number etc., values from the paper documents to complete each EDMS index.
- 15) As the TA completes each set of indexing values, he or she hits the browse button in EDMS and navigates to the appropriate directory (in the case noted above, H:\EDMS_CASES) and then finds the correct file by comparing the information on the paper report against the standard filename. (MI-2004-0011-US405.TIF)
- 16) After the TA has completed a batch of paper documents, the scanned-and-indexed paper documents are forwarded to the FPS for the Quality Assurance review.

- 17) The FPS randomly selects and sets aside every 4th CR or SA and every 4th enforcement report for a quality assurance review
- 18) For each selected paper CR and Case, the FPS searches EDMS and locates the stored scanned document. The FPS compares the paper document to the index values in EDMS to verify a match.
- 19) The FPS opens the document from EDMS, and compares the page count as noted on the paper original against the page count as indicated by the viewer program. For the case noted above, the software shows 48 pages.
- 20) The FPS then goes into "Thumbnail" view and verifies the legibility of the first, last, and 5 random middle pages.
- 21) After completing the Quality Assurance review of all sampled paper documents, the FPS sets the reports into an outbox marked "Awaiting Backup". Other batches of scanned and quality checked documents are already in the box.
- 22) On Wednesday, the FPS notes that the Division has received no notice of an EDMS backup system failure. The FPS forwards the fully processed documents in the "Awaiting Backup" box to the TA for proper disposal.
- 23) NOTE: although this is the typical process, the TA or the individual that originally scanned the document into EDMS, can also perform the EDMS verification process.

Added to eFOTM: 07/28/08

1.5 Safety Audit Manual

[SA General Guidelines for Safety Audits](#)

[SA Part 387 - Insurance Requirements](#)

[SA Part 390 - General Requirements](#)

[SA Part 391 - Qualification of Drivers](#)

[SA Part 382 - Controlled Substances/Alcohol Use and Testing](#)

[SA Part 383 - Commercial Driver's License Standards](#)

[SA Part 385 - Procedures](#)

[SA Part 395 - Hours of Service of Drivers](#)

[SA Part 392 - Driving of Motor Vehicles](#)

[SA Part 393 & 396 - Parts & Accessories, and Inspection, Repair & Maintenance](#)

[Safety Audit Procedures for Hazardous Materials Carriers](#)

[SA Conclusion of Investigation and Completion of Part C](#)

[SA Mexican Carrier](#)

[SA Appendix SA-1](#)

[Safety Management Plan](#)

1.5.1 General Guidelines for Safety Audits

[Operational Procedures For Safety Audits](#)

[Special Procedures For Safety Audits](#)

[Illustration SA-1 – Confirmation Letter and Questionnaire](#)

[Illustration SA-2 – Contact Report](#)

1.5.1.1 Operations Procedures for Safety Audits

[What is a Safety Audit?](#)

[What procedures should be taken to prepare for a safety audit?](#)

[What Should I Do Upon My Arrival at the Motor Carrier's Office?](#)

[What Areas Should I Cover During the Opening Interview with the Motor Carrier?](#)

[After I've interviewed the carrier, how do I complete Part A](#)

[Special Topic: Motor Carriers of Passengers](#)

[New Entrant Call Center Process](#)

1.5.1.1.1 What is a Safety Audit

What is a Safety Audit?

The safety audit is an examination of a new entrants operations to provide educational and

technical assistance on safety and the operational requirements of the FMCSR and applicable HMRs. The audit also gathers critical safety data needed to make an assessment of the carriers safety performance and basic safety management controls. Safety audits do not result in safety ratings [Title 49, Part 385.101].

When would a Safety Audit be conducted?

Safety Audits are conducted on New Entrants within 18 months after beginning operations. New Entrants which transport passengers are required to have a Safety Audit conducted within 9 months after beginning operations ([See Policy Memo effective 3/1/05](#)).

When would a Safety Audit be conducted on a Mexico-domiciled carrier?

FMCSA will conduct a safety audit, on a Mexico-domiciled carrier, within 18 months after the carrier is issued a provisional Certificate of Registration under Part 368.

What is the Safety Audit process?

The safety audit will be conducted by an individual certified as a Safety Auditor or Safety Investigator, under FMCSAs regulations, and will consist of an interview session with a motor carrier official and a two to four hour review of the new entrants safety management systems and a sample of required records and operational practices. The areas for review include the following:

- Driver qualifications
- Driver records of duty status
- Vehicle maintenance including repair and maintenance
- Accident register
- Controlled substances and alcohol use and testing requirements
- CDL license standards
- Financial responsibility
- Transporting and marking hazardous materials
- Economic regulations (including Household Goods)
- Operating Authority

What is the format of a Safety Audit?

The SA has three parts: Parts A, B, and C.

- **Part A** - is multipurpose and provides the background/introductory information for the audit.
- **Part B** - consists of questions (safety / HM). The questions are structured to provide the auditor with a systematic review of the carrier's operations. The answers serve as indicators for the effectiveness of a carriers compliance with applicable FMCSR and/ HMRs.
- **Recommendations** - provide the carrier with suggestions and requirements to gain future compliance.
- **Part C** - provides specific information about the SA such as the name and title of the individual who signed the audit and comments from the auditor.

The pass/fail criteria for SA can be found in Appendix A to Part 385.

Generally, the SA should only cover the questions on the SA. However, you should be prepared to explain the documents outlined in the Educational and Technical

Assistance packet to ensure that the motor carrier is aware of safety expectations.

Are all new carriers subject to the Safety Audit requirement?

All new entrant motor carriers (private and for-hire) seeking to operate in interstate commerce must undergo a SA. The SA is a non-enforcement educational opportunity for the new entrant. Although civil penalties are not taken against a carrier, a carriers registration may be revoked as a result of failing a SA. If any compliance review violations are discovered during the audit, the audit will cease and a compliance review will be conducted instead. If a SA converts to a CR, enforcement for violations cited on the CR is possible.

Where are Safety Audits conducted?

New entrant audits may be conducted either at the carriers place of business or in a group setting. Division Administrators/State Directors should determine which method is most efficient and cost effective to the Government. It is essential that all audits are standardized and conducted in a uniform manner from State to State.

 **Note: Only Federal staff will conduct audits on Canadian carriers and Mexico-domiciled carriers.**

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1.5.1.1.3 What Should I Do Upon My Arrival at the Motor Carrier's Office

1. Identify yourself and your employer.
2. Display your credentials.
3. Ask to speak to a motor carrier/shipper official who has knowledge of the entire operation (e.g., President, Vice President, General Manager, etc). If he/she is not available, you should ask for the individual in charge of safety.
4. Explain the purpose of the visit to the official. Explain that various company records will be reviewed and that you will need to talk to the individuals responsible for compliance with the safety, hazardous materials, financial responsibility, and commercial regulations.
5. If you were not able to meet with a corporate official, explain that you will need to meet with this person for your close out.
6. If a questionnaire was not sent to the motor carrier prior to your arrival, or if no appointment was made, obtain the information needed to complete Part A of the SA.

 **Explain to the carrier how long the audit is expected to take, and at what time certain records and carrier employees will be needed. This allows you and the carrier to most efficiently complete the review process.**

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1.5.1.1.5 After I've interviewed the carrier, how do I complete Part A

If a questionnaire was used to conduct a phone interview with the motor carrier prior to your arrival, your Part A is probably already complete. If a phone interview was not conducted

prior to your arrival you will need to obtain the information. Complete Part A of the Compliance Review/Safety Audit report by interviewing appropriate personnel of the motor carrier and/or shipper. Complete Part A as follows:

[Legal Name of Motor Carrier/Shipper](#)

[Doing Business As \(DBA\)](#)

[Employer Identification Number \(EIN\)/Social Security Number \(SSN\)](#)

[Gross Revenue](#)

[Mileage](#)

[Equipment](#)

[Drivers](#)

Legal Name of Motor Carrier/Shipper

It is imperative that you verify and enter the correct and complete legal name of the motor carrier. If this is not done, further action against the motor carrier may be hindered. In the case of a corporation, obtain the exact company name by asking a corporate officer, examining the Articles of Incorporation, and/or requesting a document with the corporate seal. The full names of corporate officers, partners, or the sole proprietor should be obtained.

If the legal name is different than that recorded in our database, make the change in MCMIS before you upload the compliance review. Otherwise the upload may generate an error message and reject the review.

Doing Business As (DBA)

In the case of individuals or corporations who are doing business under a name, other than the legal name, enter the doing-business-as (DBA) name in the appropriate field. For example, if John Jones is doing business as JJ Trucking, enter JJ Trucking. DBAs are also known as operating names, assumed business names (ABN), common names, or trade names.

Employer Identification Number (EIN)/Social Security Number (SSN)

In the case of a carrier operating as a sole proprietor, you will need to obtain the social security number, or in some cases, the EIN. If the carrier operates as a partnership or corporation, you will need to obtain the EIN. In some circumstances a parent company and its subsidiaries will share the same EIN. This is permissible under IRS rules and is just a reflection of the fact that the parent corporation files a single tax return that includes the subsidiaries. It is important that this information is correct. The EIN is also known as the Federal Tax ID Number.


Gross Revenue


You will need to enter all revenue generated by the legal entity being reviewed. If the motor carrier refuses to release this figure, or the figure is for less than 12 months, document this information in Part C. When a carrier refuses to provide you a gross revenue figure, you should consult with your Supervisor, Division Administrator/State Director, or Service Center to estimate the gross revenue. If no figure was provided, estimate the gross revenue using the following:

Mileage (previous 12 months) X \$1.50 = Estimated Gross Revenue

Remember to convert foreign currency into US dollars.

Mileage (previous 12 months)

 For motor carriers domiciled in the United States, you will need to enter total commercial motor vehicle mileage for all power units under the carriers control recorded on Part A. Include mileage in interstate and intrastate commerce, and mileage in Canada and Mexico.

 For motor carriers domiciled in Canada and Mexico, you will need to enter mileage occurring in the United States, or as part of an interstate trip to or from the United States. Remember to convert kilometers into US miles.

If the motor carrier has been operating for less than 12 months, you will need to estimate the annual mileage based on the total mileage since beginning operations. For example, a motor carrier has 800,000 total vehicle miles since beginning operations 8 months ago.

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The following formula shows how the **Annual Mileage Estimate** is determined:

Annual Mileage Estimate = $\frac{(12 \times \text{Miles Operated})}{\text{Months Operated}}$
For this example: Annual Mileage Estimate = $\frac{(12 \times 800,000)}{8} = 1,200,000$

Equipment

The data you enter should reflect the vehicles that are, or could be, operated at the time of the investigation with the exception of trip-leased vehicles. You should enter an average of trip-leased vehicles per month. If the same vehicle is used several times in a month, count each trip separately. "Term-leased" equipment is often used interchangeably with the term "permanent-leased." A term-lease lasts for 30 days or longer.



The following are passenger carrying equipment definitions for completion of Part A:

- **Intercity Motor Bus (Motorcoach)** - A vehicle designed for long distance transportation of passengers, usually equipped with a lavatory, storage racks above the seats, and a baggage hold beneath the cabin.
- **School Bus** - A vehicle designed and/or equipped mainly to carry primary and secondary students to and from school, usually built on a medium or large truck chassis.
- **Mini-bus/Van** - A multi-purpose passenger vehicle with a capacity of 10-24 people, typically built on a small truck chassis.
- **Limousine** - A passenger vehicle usually built on a lengthened automobile chassis.
- **Small Passenger** - Carrying Commercial Motor Vehicles or Camionetas- designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce, when they are directly compensated for such services and the vehicle is operated beyond a 75 air mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location.



Additionally, for audits conducted in Performance and Registration Information Systems Management (PRISM) states, obtain a list of all power units operated under the motor carriers control (leased and owned). The list shall include the name and address of the vehicle registrant and owner, the vehicle identification number, state license number and the state of license issuance. The list may be used to provide notice of potential State vehicle registration sanctions to vehicle registrants and owners. In instances in which an entity other than the motor carrier owns and/or registers the vehicles sanction notices may be sent to them also.

Drivers

Ask the motor carrier to provide you with the average number of driver positions for the last 365 days. The total number of drivers who are subject to the FMCSR includes single-employer drivers, multiple-employer drivers, and the average number of trip leased drivers per month used in the prior 365 days. A driver who was trip leased five times during a month is counted five times rather than once. A driver is counted as a CDL driver if he/she operates a commercial motor vehicle as defined in Part 383.

Ask the motor carrier to provide you with a list of all drivers they have used during the last 12 month period who operate a commercial motor vehicle. Drivers who are subject to the FMCSR include single-employer drivers, multiple-employer drivers, and the average number of trip leased drivers per month used in the prior 365 days. A driver who was trip leased five times during a month is counted five times rather than once. A driver is counted as a CDL driver if he/she operates a commercial motor vehicle as defined in Part 383. Although a driver may fit into more than one category, identify the driver in only one category.

To determine the sampling for Part 382 (random controlled substances and alcohol testing), ask the motor carrier to provide you with the average number of driver positions for the last 365 days. If you deviate from the driver sampling charts for other Parts of the FMCSR, you must explain the deviation on Part C.

1.5.1.1.6 Special Topic: Motor Carriers of Passengers

What are the important issues to remember when investigating carriers of passengers?

Private motor carriers of passengers (PMCPs) became subject to the FMCSR on January 1, 1995. They are separated into two groups, business or nonbusiness, and are exempt from certain requirements of the FMCSR. Motor carriers operating vehicles designed or used to transport 9 to 15 passengers (including the driver) for compensation became initially regulated by FMCSA on February 12, 2001. More information on each of these types of operations follows:

[For Hire Carriers of Passengers](#)

[Business Private Motor Carriers of Passengers \(Business PMCP\)](#)

[Nonbusiness Private Motor Carriers of Passengers \(Nonbusiness PMCP\)](#)

[Small Passenger-Carrying Vehicles](#)

[Insurance Requirements](#)

[School Bus Transportation](#)

For Hire Carriers of Passengers

What are the three factors that must be present to classify a passenger carrier as for-hire?

- The motor carrier provides interstate transportation of passengers for a commercial purpose,
- The motor carrier is compensated, either directly or indirectly, for the transportation service provided, and
- The transportation service is generally available to the public at large.

Business Private Motor Carriers of Passengers (Business PMCP)

What is a Business PMCP?

Business PMCP provide private transportation of passengers in the furtherance of a commercial purpose. Examples include companies that use buses to transport their own employees and professional musicians who use buses for concert tours. Commercial businesses that provide passenger transportation to the general public are not business PMCPs.

What parts of the Federal Motor Carrier Safety Regulations apply to a Business

PMCP?

Part	Regulatory Topic	Applicable
380	Special Training Requirements	Partial (Subject to Part 380 Subpart E, Entry -Level Driver Training Requirements)
382	Controlled Substances and Alcohol Use and Testing	Yes
383	Commercial Driver's License	Yes
387	Financial Responsibility (Insurance/Surety)	Yes
390	General Applicability and Definitions	Yes
391	Qualification of Drivers	Yes
392	Driving of Commercial Motor Vehicles	Yes
393	Parts and Accessories	Yes
395	Hours of Service of Drivers	Yes
396	Inspection, Repair, and Maintenance	Yes

Do I need to be aware of any exemptions?

Yes. Business PMCP are not subject to the road test requirements of Part 391. The Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU) mandates FMCSA make PMCPs (including business PMCPs) subject to some level of financial responsibility. Until FMCSA has published final regulations implementing the statutory section, business PMCPs are not subject to a minimum level of financial responsibility.

Nonbusiness Private Motor Carriers of Passengers (Nonbusiness PMCP)

What is a Nonbusiness PMCP?

Nonbusiness PMCPs provide private transportation of passengers that is not in the furtherance of a commercial purpose. Examples of nonbusiness PMCPs include churches, private schools, civic organizations, scout groups, and other charitable organizations that may purchase or lease buses for the transportation of their respective groups. **Nonbusiness PMCPs are not subject to Safety Audits.**

Small Passenger-Carrying Vehicles

What is a Small Passenger-Carrying Vehicle?

The Federal Motor Carrier Safety Administration (FMCSA) has safety regulatory oversight of for-hire operators of small passenger-carrying vehicles that engage in interstate commerce. The extent of the requirements depends on the nature of the operation. The regulations basically separate such operations into two groups:

Group One

For-hire motor carriers that:

- Operate vehicles designed or used to transport 9 to 15 passengers (including the driver) in interstate commerce,
- Are directly compensated for such transportation services, and
- Operate such vehicles beyond a 75 air mile radius from the driver's normal work-reporting location.

Group Two

For-hire motor carriers that:

- Operate vehicles designed or used to transport 9 to 15 passengers (including the driver) in interstate commerce, **and**
- Are indirectly compensated for such transportation services, **or**
- Are directly compensated, but operate within a 75 air mile radius.

Note: The SAFETEA-LU statute mandates FMCSA make interstate operations of commercial motor vehicles designed to transport 9 to 15 passengers (including the driver) subject to the FMCSRs regardless of the distance traveled. Until FMCSA has published final regulations implementing the statutory section, the current regulations apply.

What does direct compensation mean?

Direct compensation means payment made to the motor carrier by the passengers or the individual acting on behalf of the passengers for the transportation services provided, and not included in a total package charge or other assessment for highway transportation services. Indirect compensation means the charge for the transportation services provided is included in a total package charge or other assessment.

What requirements are applicable to operators of Small Passenger-Carrying Vehicles in Group One?

Passenger carriers in the first group are subject to all of the safety standards in part 385 and parts 390 through 396 of the Federal Motor Carrier Safety Regulations. These carriers are required to file a motor carrier identification report (Form MCS-150) and mark their vehicles with a USDOT identification number. These carriers are also subject to safety ratings, accident register record keeping, medical examination requirements for drivers, driver qualification files, hours of service limitations, records of duty status, and record keeping for inspection, repair, and maintenance.

What requirements are applicable to operators of Small Passenger-Carrying Vehicles in Group Two?

Passenger carriers in the second group are required to file a motor carrier identification

report, mark their vehicles with a USDOT identification number, and maintain an accident register. Passenger carriers in the second group are not subject to Safety Audits.

Insurance Requirements

What are the insurance requirements for For-Hire Passenger Carriers, Business PMCP, Nonbusiness PMCP, and operators of Small Passenger-Carrying Vehicles?

Regulations covering minimum levels of financial responsibility (insurance) are found in Part 387, Subpart B. The chart below summarizes the applicability of the minimum levels of financial responsibility regulations to passenger carriers.

Vehicle	For-hire Passenger Carrier	Business PMCPs	Nonbusiness PMCPs
Vehicle with a seating capacity of 16 or more.	\$5,000,000 insurance coverage required (see Note 2 below)	Not Subject (see Note 1 below)	Not Subject (see Note 1 below)
Vehicle with a seating capacity of 15 or less.	\$1,500,000 insurance coverage required (see Note 2 below)	Not Subject (see Note 1 below)	Not Subject (see Note 1 below)

Note 1: The SAFETEA-LU statute mandates FMCSA make PMCPs subject to some level of financial responsibility. Until FMCSA has published final regulations implementing the statutory section, nonbusiness PMCPs are not subject to a minimum level of financial responsibility.

Note 2: Passenger carriers that are Federal Transit Administration grantees (Transit Benefit Operators) under 49 U.S.C. 5307, 5310, or 5311 are required to maintain liability insurance at least at the highest level required by any of the States in which the transit service area is located instead of the required levels listed above for for-hire passenger carriers.

Do I need to be aware of any exemptions?

Minimum financial responsibility regulations do not apply to:

- A motor vehicle transporting only school children and teachers to and from school.
- A motor vehicle providing taxicab service, having a seating capacity of less than 7 passengers, and not operating on a regular route or between specified points.
- A motor vehicle carrying less than 16 individuals in a single daily round trip to commute to and from work.
- A motor vehicle operated by a motor carrier under contract providing transportation of pre-primary, primary, and secondary students for extracurricular trips organized,

sponsored, and paid by a school district

School Bus Transportation

What parts of the Federal Motor Carrier Safety Regulations (390-399) apply to operators who provide school bus transportation?

Type	Home-to-School or School-to-Home	Extracurricular School Activities
Public School Transporting Students	Not Subject	Not Subject
Private School Transporting Pre-primary, Primary, and Secondary Students	Not Subject	Subject as Nonbusiness PMCPs
Private School Transporting Post-secondary Students	Subject as Nonbusiness PMCPs	Subject as Nonbusiness PMCPs
For-hire Contractors Transporting Pre-primary, Primary, and Secondary Students	Not Subject	Subject as For-Hire Carrier
For-hire Contractors Transporting Post-secondary Students	Subject as For-Hire Carrier	Subject as For-Hire Carrier

What are the insurance requirements for school bus contractors that are for-hire operators of school buses engaged in interstate transportation?

Type of Passenger Carriage	Home-to-School or School-to-Home	Extracurricular School Trips Organized, Sponsored and Paid for by the School	Extracurricular School Trips Organized, Sponsored and Paid for by an Independent Group (e.g., booster clubs, etc).
Transportation of Pre-primary, Primary, and Secondary Students and Accompanying Teachers.	Not Subject	Not Subject	Bus seating capacity of 16 or more: \$5,000,000 insurance coverage required. Bus seating capacity of 15 or less: \$1,500,000 insurance coverage required
Transportation of Post-secondary Students.	Bus seating capacity of 16 or more: \$5,000,000 insurance coverage required.	Bus seating capacity of 16 or more: \$5,000,000 insurance coverage required.	Bus seating capacity of 16 or more: \$5,000,000 insurance coverage required.

	Bus seating capacity of 15 or less: \$1,500,000 insurance coverage required.	Bus seating capacity of 15 or less: \$1,500,000 insurance coverage required.	Bus seating capacity of 15 or less: \$1,500,000 insurance coverage required.
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Updated: 7/28/2008

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1.5.1.2 Special Procedures For Safety Audits

What should I do if the carrier fails to keep an appointment after several attempts have been made?

If a carrier fails to keep an appointment, and several attempts have been made to conduct the audit, the situation should be considered a refusal to permit a safety audit to be performed on a new entrant's operations. It is required that documentation is maintained for attempts if refusal becomes an issue. [Illustration SA-2](#) may be used to document attempts to schedule an audit. The procedures outlined in 385.337 should be followed.

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Are there situations where a New Entrant will receive a Compliance Review rather than a Safety Audit?

A compliance review should be conducted in place of a safety audit if, during the 18-month monitoring process, one of the following conditions occurs:

- A new entrant motor carrier is involved in a significant crash,
- A new entrant motor carrier is the subject of a non-frivolous complaint,
- A new entrant motor carrier is involved in an HM incident,
- A new entrant motor carrier is listed on the SafeStat A & B List.
- A new entrant motor carrier is transporting materials that require a HM Permit
- A violation is discovered that converts the SA into a CR (See next paragraph)

Under what circumstances will a Safety Audit be converted to a Compliance Review?

If during a safety audit one or more of the following safety or hazardous materials violations are found, **the safety audit must cease immediately and should not be completed:**

- 382.201 – Using a driver who has an alcohol concentration of 0.04 or greater
- 382.211 – Using a driver who has refused to submit to an alcohol or controlled substances test
- 382.215 – Using a driver who has tested positive for a controlled substance
- 383.23(a) – Allowing a driver to operate a commercial motor vehicle without a valid commercial driver's license (a CR is not mandatory if the driver doesn't have the proper endorsement)
- 383.37(a) – Allowing, requiring, permitting, or authorizing an employee with a CDL which is suspended, revoked, or canceled by a State or who is disqualified to operate a commercial motor vehicle (Safety related issues only)
- 383.51(a) – Allowing, requiring, permitting, or authorizing a driver who is disqualified to drive a commercial motor vehicle
- 391.11(b)(4) – Using a physically unqualified driver
- 391.15(a) – Using a disqualified driver
- 392.4(b) – Carrier used driver while using or possessing drugs
- 392.5(a) / 392.5(b)(1) – Carrier used driver while using or possessing alcohol
- 177.841(e) – Carrier hauled poisonous HM with food stuffs or feed for humans or animals

A compliance review should be conducted as outlined in the FOTM and should be initiated as follows:

- If the person conducting the safety audit is certified to conduct compliance reviews and sufficient records are available, the compliance review should be initiated immediately. The auditor should inform the carrier that certain violations were found during the audit requiring a CR to be conducted. Also, the auditor should explain to the carrier that the safety audit will cease and a compliance review will be conducted in its place; or
- If the person conducting the audit is not certified to conduct compliance reviews, the safety audit should come to an end immediately. Do not close out the safety audit. Inform the new entrant carrier that certain violations were found during the audit requiring a CR to be conducted. Also, the auditor should explain to the carrier that the safety audit will cease and a compliance review will be scheduled. The violation(s) should be documented and forwarded to the Division Administrator/State Director. The Division Administrator/State Director should in turn schedule the motor carrier for a compliance review.

1.5.1.3 SA Illustration SA-1

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
Address
City, State, Zip Code
Telephone

IN REPLY REFER TO

[Date]

USDOT Number: [Insert DOT#]

Carrier Official

Name of Motor Carrier

Address of Motor Carrier

City, State, Zip Code

Dear Motor Carrier:

The Federal Motor Carrier Safety Administration is responsible for ensuring the safe operation of commercial motor vehicles on our Nation's highways.

In an effort to fulfill our responsibility to the motoring public, an audit of your operations will be conducted. The audit will include: driver's hours of service and licensing, vehicle maintenance and inspection, driver qualifications, accidents, and other safety and transportation records. Please bring/have available the documents as outlined in the enclosed.

Per our conversation on [Date], the audit is scheduled as follows:

[Place]

[Date]

[Time]

If you have any questions regarding this notice, or if you need further information, please contact:

Federal Motor Carrier Safety Administration

Address

City, State, Zip Code

Telephone Number [your extension]

Sincerely,

Your Name
Safety Investigator

Enclosure

Carrier Information for Safety Audits As applicable, have the following available at time of Safety Audit.
Insurance and Economic Documentation: Have available a current copy of Form MCS-90 or MCS-90B (Insurance Endorsement). Also have available a copy of Form BOC-3 (Designation of Process Agents)
Controlled Substances and Alcohol Testing Administration Records: Have available for review all administrative records related to controlled substances and alcohol testing. If you are enrolled with a consortium, obtain from the consortium and have available the consortium's current list of drivers for you company. Have available for review a copy or your company's Controlled Substances and Alcohol Testing Policy. Have available the quarterly/semi-annual summaries (from the laboratory) of Controlled Substances and Alcohol Tests for year 2002 (if applicable). Have available for review a copy of the annual calendar year summary for year 2002 (if applicable).
Accident Records: Have available for review all records related to accidents for the past 365 days, including an accident register. Also, have available a copy of your damage/loss run from your insurance company and/or any State accident reports maintained. Include all accidents resulting in fatality, injury, and/or tow – regardless of whether or not your driver or leased driver was found to have been "at fault". The accident register and copy of accident reports will only be reviewed for accidents occurring in the United States.
Driver Qualification: Have available for review, driver qualification files for all drivers used within the past 12 months. If your company operates with drivers assigned to various locations or functions, be prepared to identify each driver's status (i.e., terminal location, commercial zone vs. long haul, van vs. flat bed operations, leased vs. company, etc).
Hours of Service: Provide a driver specific listing showing assigned units and account numbers for phone and/or fuel charges for all drivers, including leased operators, used within the past six months.
Have available all records of duty status for previous six months for all drivers, including leased operators. Also have available all supporting documents (i.e. trip envelopes, driver expense receipts, telephone records, fuel reports, dispatch logs, payroll records, bills of lading, etc.) for previous six months for all drivers.
Equipment/Maintenance: For previous 12 months, provide a list showing all equipment

owned/leased/trip leased and operated in intrastate and interstate commerce. Designate type of equipment (i.e., straight trucks, tractors, trailers, HM cargo tank trucks, HM cargo tank trailers, buses). If applicable, indicate terminal locations and/or date removed from service.

Have available all maintenance files and records for each unit, including leased units. Files and records include evidence of annual inspections, repair receipts, maintenance schedules, qualification of persons performing annual inspections and/or brake repair and adjustments. Also have available copies of drivers' daily vehicle inspection reports for the past three months.

Hazardous Materials Records (if applicable): Have available a current copy of the DOT/RSPA HM registration, HM training materials and records of such training. Also have available a copy of the most recent shipping document for each class of materials transported.

1.5.1.4 SA Illustration SA-2

CONTACT RECORD

Legal name: _____

DBA: _____

USDOT #: _____

Date: _____ Time: _____

Person spoke with (or no answer): _____

Summary of conversation:

Date: _____ Time: _____

Person spoke with (or no answer): _____

Summary of conversation:

Date: _____ Time: _____

Person spoke with (or no answer): _____

Summary of conversation:

Date: _____ Time: _____

Person spoke with (or no answer): _____

Summary of conversation:

Recommend failure to permit SA letter: Yes _____ No _____ Sent on: _____

Revocation letter: Yes _____ No: _____ Letter sent on:

1.5.2 Safety Audit Part 387 - Insurance Requirements

[SA Part 387 - Safety Audit Procedures](#)

[SA Part 387 - CAPRI Procedures](#)

1.5.2.1 SA Part 387 - Safety Audit Procedures

During your review of compliance with Part 387, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable hazardous materials) and passengers.

What procedures should I follow during my audit of Part 387?

Your audit of Part 387 should consist of:

- Verify the motor carrier was subject to Part 387, and
- Review the documentation proving the motor carrier's financial responsibility requirements.

Following this review you should:

- Answer [Part 387 Safety Audit questions](#).

How do I verify the carrier has obtained and has in effect the required minimum level of financial responsibility?

Request the carrier's form MCS-90/90B. Ensure that an authorized representative of the issuing insurance company has countersigned the form. If the motor carrier does not have

the adequate levels of financial responsibility, inform **the motor carrier officials that they must cease operations until they have the appropriate level of insurance on file.** You should include in a recommendation in your audit for the carrier to obtain the proper level of insurance and have the motor carrier initial this recommendation. You should also follow up with the carrier after the audit has ended, to ensure they have obtained the required levels of liability insurance.

What if the carrier cannot produce the MCS-90/90B, but can produce the MCS/82-82B?

The MCS-82/82B are acceptable forms to prove required liability insurance coverage.

What if the carrier has an insurance policy, but cannot produce a form MCS-90/90B or MCS-82/82B?


You will need to search through the insurance policy documents for the form. The motor carrier must have proof of the minimum level of insurance at the company’s principal place of business. The carrier providing copies of the MCS-90 or MCS-82 forms will show proof of the minimum levels of liability insurance.


1.5.2.2 SA Part 387 - CAPRI Procedures



Once you have completed your audit of compliance with Part 387, you should use the following guidelines to assist in completing Part B - Questions List Tab or Answer Questions Tab of the CAPRI software.

How do I answer Part 387 Safety Audit Questions?

<p>General Question #1- (ACUTE) 387.7(a)-Does the carrier have the required minimum level of financial responsibility in effect?</p>			
Yes	No	Not Applicable	Documents
If the carrier has the required levels of financial responsibility	If the carrier does not have in effect the required minimum levels of financial responsibility. Note: If No, #2 is N/A.	If the carrier is not subject to Part 387.	Check L & I Web site. MCS-90/90B MCS-82/82B and/or insurance policy
<p>Required Comments: Record the amount of the financial responsibility the motor carrier does have (if any). Include a trip date, drivers name, and the commodity transported.</p> <p> Note: There are no requirements for Mexico-domiciled carrier to make an insurance filing on a 24-hour insurance policy at this time. (See 387.7(b)(3))</p>			

<p>General Question #2- (CRITICAL) 387.7(d) - Does the carrier have required proof of financial responsibility?</p>			
Yes	No	Not Applicable	Documents
If the carrier has copies of signed MCS-90 or MCS-82 forms.	If the carrier does not have the required forms, but they do have the required level of financial responsibility.	If the carrier is a private motor carrier not transporting hazardous materials.	MCS-90/90B MCS-82/82B and/or insurance policy
<p>Required Comments: Record what is missing. Include a trip date, drivers name, and the commodity transported.</p> <p> Note: There are no requirements for Mexico-domiciled carrier to make an insurance filing on a 24-hour insurance policy at this time. (See 387.7(b)(3))</p>			

1.5.3 Safety Audit Part 390 - General Requirements

[Safety Audit Procedures](#)

[CAPRI Procedures](#)

1.5.3.1 SA Part 390 - Safety Audit Procedures

During your review of compliance with Part 390, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable hazardous materials) and passengers.

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SA Part 390 - Accidents

What is the time period I should look at during my review of accidents?

Your review of the motor carrier's interstate recordable accidents **should** cover the 12-month period prior to the initiation date of the audit [(390.15(b) – 3 years, 12 months for rating)].

What if the motor carrier has been operating less than 12 months?

You should use the date of the carrier's first interstate trip.

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What information should I look for when a carrier is required to maintain an accident register?

You should determine whether the motor carrier's annual accident register includes all required interstate recordable accident data required by Part 390.15(b)(1)(i-vi).

The accident register only needs to include recordable accidents that occurred in the United States, or as part of an interstate trip to or from the United States.

Am I required to compute the motor carrier's interstate recordable accident rate?

No, the CAPRI software will compute the motor carrier's recordable accident rate (factor 6) for you. However, if manual calculation is necessary, multiply the motor carrier's number of recordable interstate accidents in the previous twelve months by 1,000,000. Then divide that result by the motor carrier's interstate fleet mileage during the previous twelve months. For example, a motor carrier had two recordable interstate accidents and an interstate fleet mileage of 3,000,000 during the previous 12 months. The motor carrier's recordable accident rate is $(2 \times 1,000,000) / 3,000,000$ which equals 0.67.

What if I discover interstate recordable accidents, not on the company profile, during my Safety Audit (SA)?

It should be included when determining the carrier's accident rate for the SA. You should obtain a copy of the accident information, and submit the information to the DA/SD (or FPS/DPS). The DA/SD will then forward the information to the appropriate Division Office for discussion with appropriate state agency (states have 90 days to upload recordable accident information).

What if I discover any accidents on the motor company's profile that do not belong to the carrier?

These accidents should not be included in the accident rate computation. Advise the motor carrier of the error(s) and explain that they must contact DataQ's to resolve the issue.

The DataQ's website is located at: <http://datags.fmcsa.dot.gov>

SA Part 390 - Markings

How do I ensure the motor carrier has properly marked all of their vehicles?

If possible or available, visually inspect the vehicles for proper markings. At a minimum, discuss the FMCSA marking requirements.


1.5.3.2 SA Part 390 - CAPRI Procedures


Once you have completed your audit of compliance with Part 390, you should use the following guidelines to assist in completing Part B - Questions List Tab or Answer Questions Tab of the CAPRI software.

How do I answer Part 390 Safety Audit Questions?

SA Part 390 Safety Audit Questions

<p>General Question #3 390.15(b)(1) - Can the carrier provide a complete accident register of recordable accidents?</p>			
Yes	No	Not Applicable	Documents
If the register is both complete, and records all the recordable accidents for the last 12 months. (If operating less than 12 months, go back to the date the carrier received their US DOT number)	If the carrier does not have an accident register or the accident register is missing	If the carrier has not had any recordable accidents within the last 12 months. (If operating	Accident Register, Company Profile, Insurance Loss-Run Reports, Accident

	required data. Note: If No, #4 is N/A.	less than 12 months, go back to the date the carrier received their US DOT number)	Reports (local or state).
<p>Required comments: Record what is missing. Include accident date, driver's name and document not maintained.</p> <p> Note: Accidents occurring in Mexico or Canada are not counted as a USDOT Reportable Accident.</p>			

<p>General Question #4 – (CRITICAL) 390.15(b)(2) - Does the carrier have copies of all accident reports required by States or other government entities or insurers?</p>			
Yes	No	Not Applicable	Documents
If the carrier can produce accident reports for all subject accidents.	If the carrier has failed to maintain any of the required documents.	If the carrier has not had any recordable accidents within the last 12 months or the carrier was not required to maintain any accident reports.	Accident Reports (local or state), Accident Register, Company Profile, Insurance Loss-Run Reports.
<p>Required comments: Record what is missing. Include accident date, driver's name and document(s) not maintained.</p> <p> Note: Accidents occurring in Mexico or Canada are not counted as a USDOT Reportable Accident.</p>			

<p>General Question #5 390.3(e) - Is the carrier knowledgeable of the FMCSRs/HMRs?</p>			
Yes	No	Not Applicable	Documents
If the carrier has a current copy of the FMCSR/HMRs, or knows how to access the FMCSA website.	If the carrier does not have a current copy of the FMCSR/HMRs or does not know who to access the FMCSA website.		Current FMCSR/HMRs.
<p>Required comments: None.</p>			

Ensure you discuss accessibility through the Internet, Local Motor Transport Association, State Office, Transportation Industry Publication Vendor, or through local library,

General Question #6
390.21 - Does the carrier know the commercial motor vehicles marking requirements?

Yes	No	Not Applicable	Documents
The carrier knows the marking requirements and the carrier's vehicles are properly marked.	The carrier does not know the marking requirements or the carrier's vehicles are improperly marked.		

Required comments: None. Ensure the carrier knows the commercial motor vehicles marking requirements.

1.5.4 Safety Audit Part 391 - Qualification of Drivers

[Safety Audit Procedures](#)

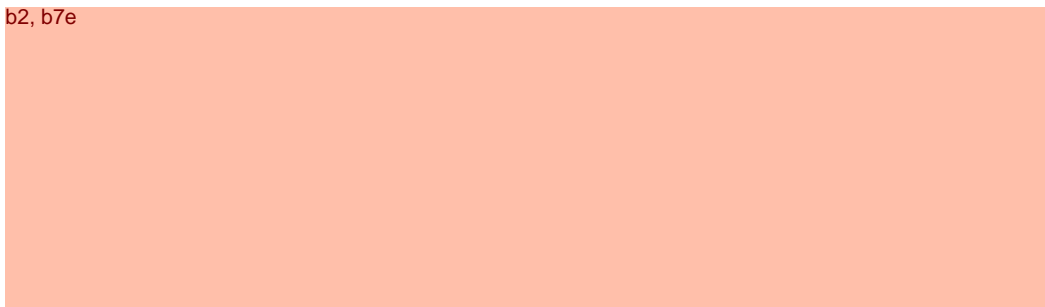
[CAPRI Procedures](#)

1.5.4.1 SA Part 391 - Safety Audit Procedures

During your review of compliance with Part 391, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable hazardous materials) and passengers.

- [Determining Driver Qualification File Sample](#)
- [Selecting Driver Qualification Files](#)
- [Reviewing Driver Qualification Files](#)

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- Review files.

Following this review, you should:

- Answer [Part 391 Safety Audit questions](#), and if appropriate, you should cease the SA and initiate a CR (if you are certified to conduct a CR).

What should my request for a driver list include?

If a driver list was not requested before the safety audit or during the opening interview, you should request a list of drivers employed in the last 12 months, and the date they were hired and/or terminated. You should verify the accuracy and completeness of the list by reviewing the company profile, payroll records, dispatch records, bills of lading, and/or other transportation or shipping documents.

SA Part 391 - Determining Driver Qualification File Sample

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required documents. If this happens, you must explain in Part C of the Safety Audit why you did not meet your sample. You must also explain in Part C if you exceed the required sampling beyond the number set forth in the chart above.

SA Part 391 - Reviewing Driver Qualification Files

What are the driver qualification file documents I should review?

The motor carrier is required to prepare and maintain driver qualification files in accordance with Part 391.51(b)(1-8). Below you will find guidance when reviewing each driver qualification file document:

- **Employment Application:** You should ensure employment application fields are completed or fields are noted as non-applicable, and signed by the driver/applicant. **NOTE:** For drivers of CDL (Part 383) required vehicles, must show previous 10 years employment history.
- **Previous Employment History Inquiry:** You should ensure motor carrier has performed inquiries into driver/applicants previous employers by means of either written document or a note of telephonic employment verification within 30 days of date of hire. Motor carrier must make a good faith effort to contact driver/applicant previous employers regarding employment history, and document their good faith effort.
- **Copy of Driver's License History Inquiry into State Agency:** You should ensure motor carrier has contacted each state agency where the driver/applicant holds an operators license, **and** obtained a copy of the driver's license history within 30 days of date of hire.
- **Road Test/Certificate or Equivalent (Copy of Valid CDL):** You should ensure the motor carrier has performed a road test for their driver/applicant on the company vehicle the driver will be required to operate, and then document the results of the road test and subsequent issuance of road test certificate. **The motor carrier may accept a copy of a valid Commercial Driver's License in lieu of the road test/certificate requirement.**
- **Medical Examiner's Certificate:** You should ensure the motor carrier has obtained a current copy of the driver's medical examiner's certificate. While reviewing the driver's medical examiner's certificate, you may have the prior medical examiner's certificate available in the driver qualification file, which will allow you to ensure the driver's medical qualifications did lapse. If you determine there was a lapse, ensure the driver did not drive in interstate commerce while he/she was not medically qualified. **NOTE:** If the driver's medical examination report (a.k.a. "The Long Form") is available in the driver qualification file, you should ensure the driver meets the medical qualification requirements as defined in Part 391.41(b)(1-13). If you discover a medical examiner qualified a driver, and that driver did not meet the medical qualification requirements defined in Part 391.41(b)(1-13), you should inform the motor carrier official that the driver does not meet the medical qualification requirements defined within Part 391, and use of the driver is in violation of the FMCSR. You should additionally notify the motor carrier official of the necessity to have the driver medically re-qualified. You will need to document in Part C of the SA report that you have made notification to the motor carrier official, in the event the motor carrier continues use of a medically unqualified driver.
- **Annual Review of Inquiry into State Agency (a.k.a. Annual Driver's License**

Check): If the driver has been employed a year or more, you should ensure the motor carrier has requested and obtained a copy of the annual driver’s license check from the state agency where the driver holds a license.

- **Annual List/Certification of Violations of Motor Vehicle Laws:** If the driver has been employed a year or more, you should ensure the motor carrier has requested and obtained the annual list/certification of violations of all motor vehicle laws (except parking) from each driver.
- **Annual Review of Driver’s Qualification:** If the driver has been employed a year or more, you should ensure the motor carrier has performed the annual review with the driver, and has a document reflecting the annual review was performed.

NOTE: As you perform your safety audit, you may wish to inform the motor carrier to perform the Annual Review for each driver after obtaining and reviewing the Inquiry to the State Agency (a.k.a. Annual Driver’s License Check), and the Annual List/ Certification of Violations of Motor Vehicle Laws. By performing the Annual Review in this manner, the motor carrier will ensure the Annual List/Certification of Violations of Motor Vehicle Laws submitted by the driver reflects the same data as the Inquiry to the State Agency (a.k.a. Annual Driver’s License Check) obtained from the State of License.

1.5.4.2 SA Part 391 - CAPRI Procedures

Once you have completed your audit of compliance with Part 391, you should use the following guidelines to assist in completing Part B - Questions List Tab or Answer Questions Tab of the CAPRI software.

How do I answer Part 391 Safety Audit Questions?


SA Part 391 Safety Audit Questions

<p>Driver Question #1 – (CRITICAL) 391.51(a) - Does the carrier maintain complete driver qualification files?</p>			
Yes	No	Not Applicable	Documents
<p>The motor carrier can provide a complete driver qualification file for each requested driver.</p>	<p>If any of the driver qualification files are missing a required document, or if one or more of the driver qualification file documents are substantially incomplete.</p>		<p>Available Driver Qualification Documents.</p>
<p>Required Comments: Provide driver(s) name, interstate trip date, and indicate missing required driver file documents, or indicate the driver file document(s) that is substantially incomplete.</p>			

Driver Question #2 – (ACUTE)**391.11(b)(4)** - Is the carrier using physically qualified drivers?

Yes	No	Not Applicable	Documents
The motor carrier is using physically qualified drivers.	If evidence indicates the motor carrier has used a driver that fails to meet the physical qualification standards outlined in 391.41(b)(1-12). If you answer “No” to this question, you should stop the SA and a CR should be conducted.		Available Driver Qualification Documents. Driver’s physical long form (if available)


Required Comments: Provide driver(s) name, interstate trip date, and indicate physical qualification standard not met (e.g. vision, blood pressure, epilepsy, insulin dependent diabetic without waiver).

 **Note:** Verify that the driver has a current SCT stamp on the Mexican Licencia Federal or a current copy of the medical / physical examination.

Driver Question #3 – (CRITICAL)**391.45(a)/391.45(b)** - Does available evidence indicate the motor carrier has used a driver without a medical certificate or with an expired medical certificate?

Yes	No	Not Applicable	Documents
If the motor carrier cannot provide a requested current medical certificate. Note: If Yes, #4 is N/A.	If the motor carrier provides current copies of requested medical certificates.		Available Driver Qualification Documents. Driver’s expired medical certificate or physical long form (if available).

Required Comments: Provide driver(s) name, interstate trip date, and indicate if driver was not medically examined or date of driver’s medical certificate expiration.


 **Note:** For Mexico-domiciled carriers; the Mexican Licencia Federal serves as proof that a driver is physically qualified. Check the company profile records to verify if any driver(s) have been placed OOS for an invalid Mexican Licencia Federal. Ask the carrier

official why the Licencia was invalidated.

Driver Question #4 – (ACUTE)
391.15(a) – Is the carrier using any disqualified drivers?


Yes	No	Not Applicable	Documents
If there is evidence that the motor carrier has used a driver after the driver has been disqualified for one of the safety related offences specified in 391.15. (The issuing state of the license would generally disqualify the driver for 391.15 driving offenses) If you answer, “Yes” to this question, you should stop the SA and a CR should be conducted.	The motor carrier has not used disqualified drivers.		Available Driver Qualification Documents. CDLIS, NCIC, or NLETS

Required Comments: Provide driver name, interstate trip date, and reason for disqualification.

 **Note:** For Mexico-domiciled carriers; the Mexican Licencia Federal serves as proof that a driver is physically qualified. Check the company profile records to verify if any driver(s) have been placed OOS for an invalid Mexican Licencia Federal. Ask the carrier official why the Licencia was invalidated.

Driver Question #5 – (CRITICAL)
391.51(b)(2) - Does the carrier maintain driving and employment history inquiry data in driver qualification files?

Yes	No	Not Applicable	Documents
The motor carrier has both the driving history, and employment history.	If there is not documented evidence of reviewing a driver's employment history during the 3-year (10 year if CDL) period prior to employment,		Available Driver Qualification Documents.

	and driving history within 30 days of date of hire. They must have both.		
<p>Required Comments: Provide driver(s) name, interstate trip date, and indicate missing or incomplete documents.</p> <p> Note: Mexico-domiciled motor carriers may not be able to review a driver's driving record, in accordance with 391.23(a)(1). This question should NOT be answered No in case of performing a safety audit on a Mexico-domiciled motor carrier.</p>			

1.5.5 Safety Audit Part 382 - Controlled Substances/Alcohol Use and Testing

[Safety Audit Procedures](#)

[CAPRI Procedures](#)

1.5.5.1 SA Part 382 - Safety Audit Procedures

During your review of compliance with Part 382, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable hazardous materials) and passengers.

[Pre-Employment Tests](#)

[Post-Accident Testing](#)

[Random Testing](#)

[Reasonable Suspicion](#)

[Drivers with Positive Tests Results or Drivers Who Refused to be Tested](#)

What if the motor carrier is not required to conduct controlled substance and alcohol testing required by Part 382?

Mark "not applicable (N/A)" for all questions in this section.

What procedures should I follow if a carrier has failed to implement a program required by Part 382?

If the motor carrier answers "No" to question #6 (Has the carrier implemented an alcohol

and/or controlled substances testing program?) in this section, responses to the remaining Part 382 questions shall be marked non-applicable to the carrier.

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What should I ask for when requesting a list of controlled substances and alcohol tests?

You should request a list of all controlled substance and alcohol tests performed during the past 12 months. The list should include the drivers' names, the type of controlled substance and/or alcohol test, and the test result. You may also request the drivers' social security number to verify against other controlled substance and alcohol testing records.

SA Part 382 - Pre-Employment Tests

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SA Part 382 - Post-Accident Testing

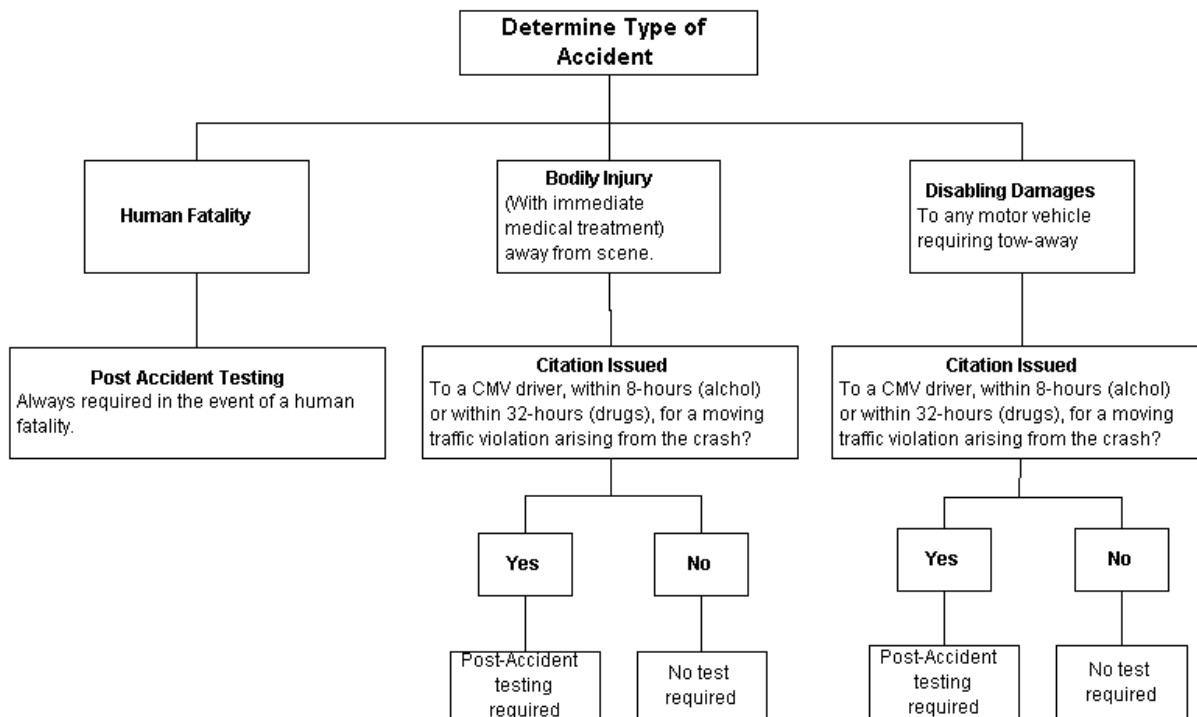
What procedures should I use for reviewing post-accident test results?

Verify that all drivers required to submit to post-accident controlled substances and alcohol tests are tested as required by 382.303(c) Applies to all recordable accidents within the last 365 days. Validate carrier's reason for failing to complete tests within the required time

limits.

When is Post-Accident Testing required?

The following flow chart is a quick reference for determining when post-accident testing is required:



Description of Flow Chart

SA Part 382 - Random Testing

Is a carrier considered to have a random testing program if the carrier has conducted at least one random test or is participating in a consortium?

Yes.

When a consortium fails to test for the required 50% for controlled substances, or 10% for alcohol, for the total number of average driver positions during a calendar year, you should then check to confirm whether the carrier met the appropriate percentages. If the motor carrier has failed to meet the appropriate random testing rates for alcohol and controlled substances, you must answer “No” to questions #14 and 15 respectively. Advise the appropriate Division Office that the consortium is in non-compliance.

What are the sampling requirements for random testing?

The number of required random tests in a calendar year is based upon the average number

of drivers subject to be tested by the employer and the applicable minimum annual percentage rate for random testing. If there are large fluctuations in the number of drivers subject to be tested by the employer throughout the year without any clear indication of the average number of driver positions, the necessary number of random tests is based upon a reasonable estimate of the number of drivers subject to be tested by the motor carrier. Use the following example to determine how many random drug and alcohol tests should be performed.

Formulas	
Controlled Substances	Alcohol
$T = .5 \times D/P$	$T = .1 \times D/P$
T = Minimum random tests. D = Number of drivers subject to be tested by employer or employer's C/TPA. P = Number of test periods per year.	

Examples -Annual Test Rates	
Controlled Substances	Alcohol
Quarter 1 = 10 Drivers Quarter 2 = 30 Drivers Quarter 3 = 300 Drivers Quarter 4 = <u>10 Drivers</u> 350 Drivers	Quarter 1 = 10 Drivers Quarter 2 = 30 Drivers Quarter 3 = 300 Drivers Quarter 4 = <u>10 Drivers</u> 350 Drivers
$T = .5 \times D/P$ $T = .5 \times 350/4$ $T = .5 \times 87.5$ $T = 43.73$ (Round up) $T = 44$	$T = .1 \times D/P$ $T = .1 \times 350/4$ $T = .1 \times 87.5$ $T = 8.75$ (Round up) $T = 9$
How many drivers have to be tested in order to meet the 50% CST rate for the year? The answer is 44, which must be reasonably spread throughout the year.	How many drivers have to be tested in order to meet the 10% Alcohol rate for the year? The answer is 9, which must be reasonably spread throughout the year.

How do I calculate the number of tests that need to be completed for a testing period?

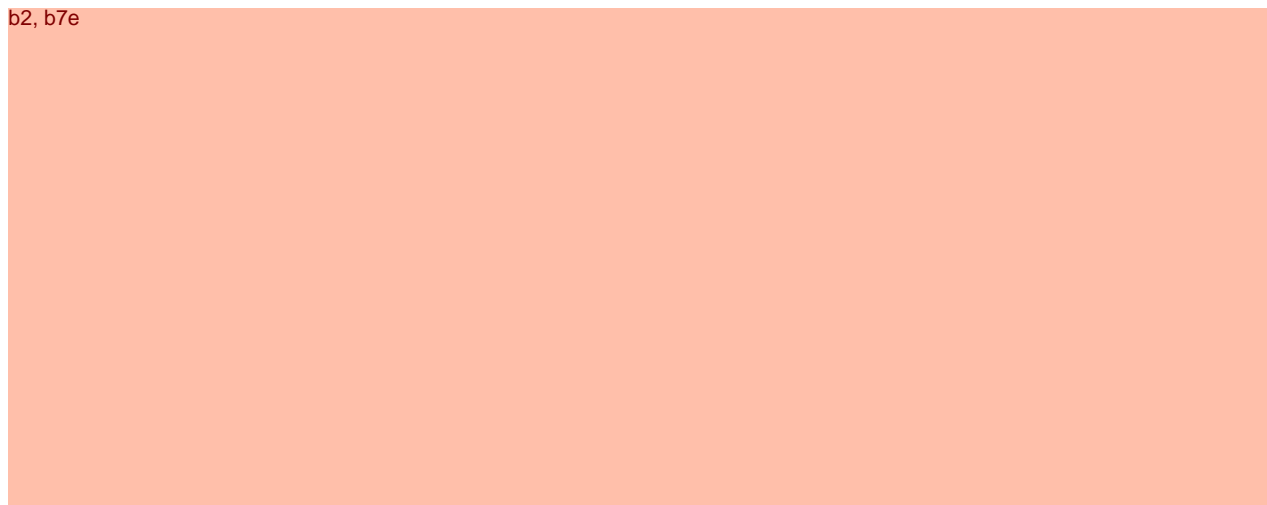
The formula above can also be used to determine the number of tests to be conducted per testing period. The following table illustrates how the number of tests can be established per testing period.

Examples -Test Period Rate (Controlled Substances)			
Carrier with four testing periods per year using drivers subject to be tested by employer or employer's C/TPA.			
Testing Period	Number of Drivers	Formula	Drivers to be tested during period.
1	10	$T = .5 \times 10/4$	1
2	30	$T = .5 \times 30/4$	4
3	300	$T = .5 \times 300/4$	38
4	10	$T = .5 \times 10/4$	1
Annual Total			44
Carrier with six testing periods per year using drivers subject to be tested by employer or employer's C/TPA.			
1	10	$T = .5 \times 10/6$	1
2	30	$T = .5 \times 30/6$	3
3	300	$T = .5 \times 300/6$	25
4	10	$T = .5 \times 10/6$	1
5	20	$T = .5 \times 20/6$	2
6	10	$T = .5 \times 10/6$	1
Annual Total			33*

*The annual rate required of this carrier is 32 Random Tests. Using this formula the carrier would actually have one more than needed and therefore may drop one of the tests. It would be inappropriate to drop a test in periods 1, 4, or 6 as the carrier would not meet the requirement to spread the tests evenly.

Description of Chart

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SA Part 382 - Reasonable Suspicion

What are the procedures I should use if reasonable suspicion tests were conducted?

Review all reasonable suspicion tests that have been conducted and ensure all supervisors have received the proper training.

SA Drivers with Positive Tests Results or Drivers Who Refused to be Tested

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What steps should I follow if I discover the carrier has used a driver with an alcohol concentration of .04 or greater or positive controlled substances test?

You should cease the Safety Audit, and initiate a Compliance Review (if you are certified to conduct Compliance Reviews)

What steps should I follow if the carrier has used a driver who has refused to submit to an alcohol or controlled substance test?

You should cease the Safety Audit, and initiate a Compliance Review (if you are certified to conduct Compliance Reviews)

1.5.5.2 SA Part 382 - CAPRI Procedures

Once you have completed your audit of compliance with Part 382, you should use the following guidelines to assist in completing Part B - Questions List Tab or Answer Questions Tab of the CAPRI software.

How do I answer Part 382 Safety Audit Questions?

Driver Question #6 (ACUTE)

382.115(a) Has the carrier implemented an alcohol and/or controlled substances testing program?

Yes	No	Not Applicable	Documents
The carrier is testing in accordance with 49 CFR Part 40.	The carrier has not performed any tests in accordance with 49 CFR Part 40.	The carrier is not required to perform alcohol or controlled substance tests in accordance with 49 CFR Part 40, then mark all remaining questions under this section as N/A	Documentation showing the gross vehicle weight rating of the vehicle operated.
Required Comments: Describe what type(s) of testing the carrier is performing, and what type of testing the carrier is missing. Provide driver(s) name, and trip date.			

Driver Question #7 (ACUTE) 382.213(b) Has the carrier used drivers who have used controlled substances?			
Yes	No	Not Applicable	Documents
If the carrier had knowledge one of its drivers used controlled substances and was used to perform a safety sensitive function. Note: Do not check Yes if the carrier used a driver who tested positive on a required controlled substance test (Question #8)	If the carrier does not have knowledge that its drivers have used controlled substances and performed a safety sensitive function.	If the carrier answered No to Question #6.	Biannual Summary Reports, Police Reports, Accident Reports, Company Profile.
Required Comments: Describe how the violation was discovered (e.g. from roadside inspection, possible post-accident, if motor carrier has not implemented a required program and driver tested positive while working for a previous employer, etc); include driver(s) name, and trip date.			

Driver Question #8 (ACUTE) 382.215 Has the carrier used a driver who has tested positive for a controlled substance?			
Yes	No	Not Applicable	Documents
If a driver tested positive on a required controlled substance test and the carrier used the driver to perform a safety	If the carrier did not have knowledge of the positive test, or if the driver was not used to perform a safety sensitive	If the carrier answered No to Question #6.	Biannual Summary Reports, Custody and Control Forms, Testing Results Form, Driver Logs, Company Profiles,

sensitive function after receiving notification of a positive test result. Note: If you answer, Yes to this question, you should stop the SA and a CR should be conducted.	function.		Police Reports, Accident Reports.
Required Actions: If Yes, and if you are a Certified to conduct compliance review, terminate the Safety Audit and initiate a compliance review. If you are certified to conduct audits only document the violation and provide to the appropriate Division Administrator/ State Director.			

Driver Question #9 (ACUTE) 382.201 Has the carrier used a driver known to have an alcohol concentration of .04 or greater?			
Yes	No	Not Applicable	Documents
If the carrier used a driver who had an alcohol concentration meeting or exceeding the requirement. Note: If you answer, Yes to this question, you should stop the SA and a CR should be conducted.	If the carrier did not have knowledge, or if the driver was not used to perform a safety sensitive function.	If the carrier answered No to Question #6.	Biannual Summary Reports, Custody and Control Forms, Testing Results Form, Driver Logs, Company Profiles, Police Reports, Accident Reports.
Required Actions: If Yes, and if you are a Certified to conduct compliance review, terminate the Safety Audit and initiate a compliance review. If you are certified to conduct audits only document the violation and provide to the appropriate Division Administrator/ State Director.			

Driver Question #10 (ACUTE) 382.505(a) Has the carrier used a driver found to have an alcohol concentration of .02 or greater but less than .04 within 24 hours of being tested?			
Yes	No	Not Applicable	Documents
If the carrier used a driver who had an alcohol concentration meeting the requirement.	If the carrier did not use the driver within 24 hours of being tested, or if no drivers were found to have an alcohol	If the carrier answered No to Question #6.	Biannual Summary Reports, Custody and Control Forms, Testing Results Form, Driver Logs, Company Profiles,

	concentration meeting the requirement.		Police Reports, Accident Reports.
<p>Required Comments: Describe how the violation was discovered (e.g. tested positive from a required alcohol test; Pre-Employment, Post-Accident, Random, Reasonable Suspicion, Return to Duty, Follow-Up or from a Police Report, etc.); include driver(s) name, and trip date, positive test result date, and name of motor carrier official who was notified of the positive test result.</p>			

<p>Driver Question #11 (CRITICAL) 382.301(a) Has the carrier ensured that drivers have undergone testing for alcohol and controlled substance prior to performing a safety sensitive function?</p>			
Yes	No	Not Applicable	Documents
If the carrier has not used a driver prior to receiving a negative result, or if the carrier has met the requirements of the exception to pre-employment controlled substance testing.	If the carrier has used a driver to perform a safety sensitive function prior to receiving a negative controlled substance test result.	If the carrier answered No to Question #6.	Biannual Summary Reports, Custody and Control Forms, Testing Results Form, Driver Logs, Company Profiles, Police Reports, Accident Reports.
<p>Required Comments: Describe how the violation was discovered (e.g. driver failed to be tested for a Pre-Employment controlled substance test before use); include driver(s) name, drivers date of hire, trip date, GVWR of vehicle operated on trip, and test result date (if any).</p>			

<p>Driver Question #12 (CRITICAL) 382.303(a)/382.303(b) Has the carrier conducted post accident testing on drivers for alcohol and/or controlled substances?</p>			
Yes	No	Not Applicable	Documents
If the carrier has performed all required tests within the required time frame, or adequately documented reasons testing not completed.	If the carrier failed to perform all necessary post accident alcohol and controlled substance testing when required.	If the carrier wasn't required to perform any post accident alcohol and controlled substance testing, or If the carrier answered No to Question #6.	Biannual Summary Reports, Custody and Control Forms, Testing Results Form, Driver Logs, Company profiles, Police Reports, Accident Reports.
<p>Required Comments: Describe how the violation was discovered (e.g. driver tested positive from a Post-Accident alcohol and/or controlled substance test); include driver(s) name, drivers date of accident, trip date, and test result(s) date (if any).</p>			

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Driver Question #13 (ACUTE)**382.305(a)** Has the carrier implemented a random testing program?

Yes	No	Not Applicable	Documents
If the carrier has implemented any random alcohol and any random controlled substance testing.	If the carrier has failed to implement either random alcohol or random controlled substance testing.	If the carrier answered No to Question #6.	Biannual Summary Reports, Custody and Control Forms, Testing Results Form.

Required Comments: Describe whether the driver is missing random alcohol testing or random controlled substance testing, or both. Include driver(s) name, and trip date.**Driver Question #14 (CRITICAL)****382.305(b)(1)** Has the carrier conducted random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions?

Yes	No	Not Applicable	Documents
If the carrier has performed the required amount of random alcohol testing.	If the carrier has not performed the required amount of random alcohol testing.	If the carrier has not been in operation for a full calendar year, or if the carrier answered No to Question #6 or #13.	Biannual Summary Reports, Custody and Control Forms, Testing Results Form.

Required Comments: Enter the number of tests required and the number of tests performed. Include driver(s) name, and trip date.**Driver Question #15 (CRITICAL)****382.305(b)(2)** Has the carrier conducted random controlled substance testing at an annual rate of not less than the applicable annual rate of the number of driver positions?

Yes	No	Not Applicable	Documents
If the carrier has performed the required amount of random controlled substance testing.	If the carrier has not performed the required amount of random controlled substance testing.	If the carrier has not been in operation for a full calendar year, or if the carrier answered No to Question #6 or #13.	Biannual Summary Reports, Custody and Control Forms, Testing Results Form.

Required Comments: Enter the number of tests required and the number of tests performed. Include driver(s) name, and trip date.

Driver Question #16			
40.305(a) Has the carrier conducted the required return-to-duty tests on employees returning to safety-sensitive functions?			
Yes	No	Not Applicable	Documents
If the carrier has performed the required return-to-duty testing.	If the carrier has used a driver who engaged in conduct prohibited by 49 CFR Part 40 Subpart O, without the required return-to-duty test.	If the carrier did not have a driver engage in conduct prohibited by 49 CFR Part 40 Subpart O, or If the carrier answered No to Question #6.	Biannual Summary Reports, Custody and Control Forms, Testing Results Form, Driver Logs, Company profile.
Required Comments: Describe how the violation was discovered (e.g. tested positive from a required alcohol/controlled substance test; Pre-Employment, Post-Accident, Random, Reasonable Suspicion) and did not submit to a return to duty test; Include driver (s) name, and trip date.			

Driver Question #17			
40.309(a) Is the carrier conducting follow-up testing as directed by the Substance Abuse Professional?			
Yes	No	Not Applicable	Documents
If the carrier has performed all necessary tests.	If the carrier has not performed all the necessary tests and the driver(s) in question performed a safety sensitive function.	If the carrier has not had any drivers subject to this requirement, or If the carrier answered No to Question #6.	Biannual Summary Reports, Custody and Control Forms, Testing Results Form, Driver Logs, Company profile.
Required Comments: Describe how the violation was discovered (e.g. tested positive from a required alcohol/controlled substance test; Pre-Employment, Post-Accident, Random, Reasonable Suspicion) and did not submit to required follow up testing; Include driver(s) name, and trip date.			

Driver Question #18 (ACUTE)			
382.211 Has the carrier used a driver who has refused to submit to an alcohol or controlled substances test required under Part 382?			
Yes	No	Not Applicable	Documents
If the carrier has used a driver to perform a safety sensitive function after refusing to submit to a test. Note: If you answer,	If the carrier has not used a driver in violation.	If the carrier has not had any drivers who refused to submit to a test, or If the carrier answered No to Question #6.	Biannual Summary Reports, Custody and Control Forms, Testing Results Form, Driver Logs, Company profile.

Yes to this question, you should stop the SA and a CR should be conducted.			
<p>Required Actions: If Yes, and if you are a Certified to conduct compliance review, terminate the Safety Audit and initiate a compliance review. If you are certified to conduct audits only document the violation and provide to the appropriate Division Administrator/ State Director.</p>			

<p>Driver Question #19 382.503 Has the carrier used a Substance Abuse Professional (SAP) as required by 49 CFR Part 40, Subpart O?</p>			
Yes	No	Not Applicable	Documents
If the carrier has used a SAP in accordance with 49 CFR Part 40, Subpart O.	If the carrier has not used a SAP in accordance with 49 CFR Part 40, Subpart O.	If the carrier has not had to use a SAP, or If the carrier answered No to Question #6.	Biannual Summary Reports, Custody and Control Forms, Testing Results Form, Driver Logs, Company profile.
<p>Required Comments: Describe how the violation was discovered (e.g. date tested positive from a required alcohol/controlled substance test; Pre-Employment, Post-Accident, Random, Reasonable Suspicion) and carrier did not require driver to submit to SAP evaluation. Include driver(s) name, and trip date.</p>			

1.5.6 Safety Audit Part 383 - Commercial Driver’s License Standards

[Safety Audit Procedures](#)

[CAPRI Procedures](#)

1.5.6.1 SA Part 383 - Safety Audit Procedures

During your review of compliance with Part 383, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable hazardous materials) and passengers.

[Requesting Driver Lists](#)

[Determining Drivers’ Commercial Driver’s Licenses to be Checked](#)

[Selecting Driver Files For Drivers License/Driving Record Checks](#)

[Mexican Licencia Federal](#)

[CDL Problems](#)

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How do I check the license status and driving records of drivers?

You should verify driver's CDL license history/status through CDLIS or other acceptable methods (e.g. NLETS, NCIC, or State Licensing System). You should also verify that drivers have the proper class and endorsements, and then check for any disqualifying offenses.

 ***SA Part 383 - Mexican Licencia Federal***

Am I required to check the status of a Mexican Licencia Federal?

There is no requirement to check with the licensing agency in Mexico to verify the violation history of the Mexican Licencia Federal.

If a Mexican Licencia Federal is not in the CDLIS, what should I do?

You should document the violation in the safety audit.

Can I call the local SCT office to verify a Mexican Licencia Federal?

No! Calling the local SCT office is no longer permitted for verification of a Licencia Federal.

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1.5.6.2 SA Part 383 - CAPRI Procedures

Once you have completed your audit of compliance with Part 383, you should use the following guidelines to assist in completing Part B - Questions List Tab or Answer Questions Tab of the CAPRI software.

How do I answer Part 383 Safety Audit Questions?

SA Part 383 Safety Audit Questions

Driver Question #20 (CRITICAL)

383.23(a) – Has a driver operated a commercial motor vehicle without a current operating license, or a license, which hasn't been properly classed and endorsed?

Yes	No	Not Applicable	Documents
If evidence indicates that any driver reviewed, operated without a current CDL or proper endorsement. Note: If you answer, "Yes" to this question, you should stop the SA and a CR should be conducted. A CR is only mandatory when the driver was NEVER issued a proper CDL. If the driver is only missing the proper endorsement, a CR is not mandatory, but this question should be answered "Yes".	If all drivers have a current operating license that is properly classed and endorsed.	If the carrier's drivers are not required to have a CDL.	Available Driver Qualification Documents, Pre-Audit Licensing Information System Checks, (e.g. CDLIS, NCIC, NLETS) Driver Logs, Company Profile.

Required Actions: If Yes, and if you are a Certified to conduct compliance review, terminate the Safety Audit and initiate a compliance review. If you are certified to conduct audits only document the violation and provide to the appropriate Division Administrator/ State Director.

Driver Question #21 (ACUTE)

383.37(a) – Has the motor carrier allowed its driver whose CDL has been suspended, revoked, or canceled by a state, have lost the right to operate a CMV in a state, or have been disqualified from operating a CMV?

Yes	No	Not Applicable	Documents
<p>If evidence indicates that the motor carrier has allowed any driver to operate a CMV after their CDL has been suspended, revoked, or canceled by a State, or they have lost the right to operate a CMV in a state, or they have been disqualified from operating a CMV for Safety-Related reasons. Note: If you answer, “Yes” to this question, you should stop the SA and a CR should be conducted.</p>	<p>If the all drivers have a current valid operating license. Note: A CR is not performed if the motor carrier did not have knowledge of a driver violating 383.37 (a), or the loss of driving privileges was for non-safety related reasons, this question should be answered “No”.</p>	<p>If the carrier’s drivers are not required to have a CDL.</p>	<p>Available Driver Qualification Documents, Pre-Audit Licensing Information System Checks, (e.g. CDLIS, NCIC, NLETS) Driver Logs, Company Profile.</p>
<p>Required Comments: Provide driver(s) name, trip date, indicate GVWR of vehicle operated on trip date, and indicate whether the driver’s CDL was suspended, revoked, canceled by a State, or has been disqualified. Indicate State of License and date of suspension, revocation, cancellation or disqualification. Indicate name of motor carrier official that knew of driver’s CDL status.</p> <p>Required Actions: If Yes for safety related reasons, and if you are a Certified to conduct compliance review, terminate the Safety Audit and initiate a compliance review. If you are certified to conduct audits only document the violation and provide to the appropriate Division Administrator/State Director.</p>			

<p>Driver Question #22 (ACUTE) 383.51(a) – Has the motor carrier knowingly allowed, required, permitted, or authorized a driver to drive who is disqualified to drive a commercial motor vehicle?</p>			
Yes	No	Not Applicable	Documents
<p>If evidence indicates that the motor carrier knowingly used any driver reviewed to operate a CMV after the driver has been</p>	<p>If the all drivers have a current valid operating license. Note: A CR is not performed if the</p>	<p>If the carrier’s drivers are not required to have a CDL.</p>	<p>Available Driver Qualification Documents, Pre-Audit Licensing Information System Checks, (e.g. CDLIS, NCIC,</p>

<p>disqualified for Safety-Related reasons.</p> <p>Note: If you answer, “Yes” to this question, you should stop the SA and a CR should be conducted.</p>	<p>motor carrier did not have knowledge of a driver violating 383.51 (a)(2), or the loss of driving privileges was for non-safety related reasons, this question should be answered “No”.</p>		<p>NLETS) Driver Logs, Company Profile.</p>
<p>Required Comments: Provide driver(s) name, trip date, indicate GVWR of vehicle operated on trip date, and indicate whether the driver’s CDL has been disqualified. Indicate State of License and date of disqualification. Indicate name of motor carrier official that knew of driver’s CDL status.</p> <p>Required Actions: If Yes for safety related reasons, and if you are a Certified to conduct compliance review, terminate the Safety Audit and initiate a compliance review. If you are certified to conduct audits only document the violation and provide to the appropriate Division Administrator/State Director.</p>			

1.5.7 Safety Audit Part 385 - Procedures

[SA Procedures Under 385.325 and 385.327](#)

[Illustration 15-1 Pass SA Letter](#)

[Illustration 15-2 Corrective Action Hand Out](#)

[Illustration 15-3 Failed SA Letter](#)

[Illustration 15-4 Corrective Action Decision Memo](#)

[Illustration 15-5 Corrective Action Acceptable letter](#)

[Illustration 15-6 Corrective Action Unacceptable letter](#)

[Illustration 15-7 Sample Revocation Letter](#)

[Illustration 15-8 NE Good Faith Extension Letter](#)

[Illustration 15-9 Flow Charts](#)

1.5.7.1 SA Procedures Under 385.325 and 385.327

Safety Audit Procedures Under § 385.325 and § 385.327

[Scope](#)

[The Safety Audit Result](#)

[Corrective Action Under § 385.325](#)

[Good Faith Effort Extension Under 49 C.F.R. § 385.323](#)

[Administrative Review Under § 385.327](#)

[Documentation](#)

[Ex Parte Communications](#)

- [Illustration 15-1: Sample Pass Letter](#)
- [Illustration 15-2: Corrective Action Handout](#)
- [Illustration 15-3: Sample Fail Letter](#)
- [Illustration 15-4 Corrective Action Decision memo](#)
- [Illustration 15-5 Sample “Accepted” letter](#)
- [Illustration 15-6 Sample Unaccepted letter](#)
- [Illustration 15-7: Sample Revocation Letter](#)
- [Illustration 15-8 Sample “Good Faith Effort Extension” Letter](#)
- [Illustration 15-9: Flowcharts of the Safety Audit and Administrative Review Process](#)

SCOPE

Procedures and guidelines in this Chapter apply to the procedures for corrective action under § 385.325 and administrative review under § 385.327.

THE SAFETY AUDIT RESULT

Each safety audit ultimately produces one of two results: pass or fail.

If it is determined that the safety audit discloses that the new entrant has the adequate basic safety management controls (pass), the new entrant will be provided written notice as soon as practicable, but not later than 45 days after the completion of the safety audit, that it has adequate basic safety management controls. The new entrant’s safety performance will continue to be closely monitored for the remainder of the 18-month period of new entrant registration. See Illustration 15-1 for a sample pass letter.

If it is determined that the safety audit discloses that the new entrant’s basic safety management controls are inadequate (fail), the new entrant will be provided a Corrective Action Handout (Illustration 15-2) during the audit’s close-out and will be provided written notice of the failure as soon as practicable, but not later than 45 days after the completion of the safety audit. See Illustration 15-3 for a sample fail letter.

The FMCSA will inform the new entrant that its USDOT number will be revoked and its operations placed out of service unless it takes the necessary actions specified in the notice to remedy its safety management practices within:

- a. 45 days of the date of the notice if the new entrant transports passengers in a CMV

- designed or used to transport 16 or more passengers, including the driver, or transports hazardous materials requiring placarding; or
- b. 60 days of the date of the notice for all other new entrants.
- Upon receiving notification that its basic safety management controls are inadequate (a new entrant carrier fails an audit), a motor carrier may provide evidence of corrective action under 49 CFR § 385.325 or request an administrative review under 49 CFR § 385.327 because it believes the FMCSA committed an error in determining that its basic safety management controls were inadequate.

CORRECTIVE ACTION UNDER 49 C.F.R. § 385.325 (TO BE HANDLED BY THE DIVISION ADMINISTRATOR)

A new entrant motor carrier can provide evidence of corrective action under 49 CFR § 385.325, for a change to a determination that its basic safety management controls are inadequate. Use the internal “Corrective Action Decision” memo (Illustration 15-4) to document whether the submitted corrective action was acceptable or not acceptable.

If the evidence of corrective action is acceptable to the FMCSA, in this case the Division Administrator (DA), within the period provided in 385.319(c), the DA will provide written notification to the new entrant that its DOT new entrant registration will not be revoked and it may continue operations. See Illustration 15-5 for a sample “accepted” letter.

If the corrective action submitted is not adequate, the DA will provide written notification to the new entrant that their evidence of corrective action was determined to be “unacceptable” and how it may submit additional documents for re-consideration prior to the scheduled out of service date. See Illustration 15-6 for a sample “unaccepted” letter.

If the new entrant fails to submit corrective action or the corrective action submitted is not adequate, HQs (MCMIS) will notify the new entrant that its registration will be revoked (see Illustration 15-7 for a sample of a revocation letter) and an out-of-service order will be issued effective on:

- a. Day 46 from the date of the notification if the new entrant transports passengers in a CMV designed to transport 16 or more passengers, including the driver, or transports hazardous materials in quantities requiring placarding; or
- b. Day 61 from the date of notification for all other new entrants; or
- c. If the DA grants an extension, the day following the expiration of the extension date.

The new entrant cannot operate in interstate commerce on or after the effective date of the OOS Order.

GOOD FAITH EFFORT EXTENSION UNDER 49 C.F.R. § 385.323

FMCSA may extend the time for a new entrant to take corrective action to remedy its safety management practices. For New Entrants that transport passengers or HM in placardable quantities, the 45 days may be extended 10 days. For all other New Entrants, the 60 days may be extended another 60 days.

The extension is:

- a. at the discretion of the DA;
- b. if agency believes carrier is making good faith effort to remedy deficiencies; &

- c. and is made after the carrier has submitted the evidence of corrective actions. See Illustration 15-8 for a sample “Good Faith Effort Extension” letter.

ADMINISTRATIVE REVIEW UNDER 49 C.F.R. § 385.327 (TO BE HANDLED BY THE FIELD ADMINISTRATOR)

When a new entrant motor carrier receives a revocation notice, it may request the FMCSA, in this case the Field Administrator, to conduct an administrative review if it believes the FMCSA has committed an error in determining that its basic safety management controls were inadequate.

The request must be made to the Field Administrator of the appropriate FMCSA Service Center and it must explain the error the new entrant believes the FMCSA committed in its determination. The FA may request that the new entrant submit additional data and attend a conference to discuss the issue(s) in dispute. If the new entrant does not attend the conference, or does not submit the requested data, the FA may dismiss the new entrant’s request for review.

The FA will complete its review and notify the new entrant in writing of its decision within 30 days after receiving a request for review from a hazardous materials or passenger new entrant and within 45 days from any other new entrant.

A new entrant must make a request for an administrative review within:

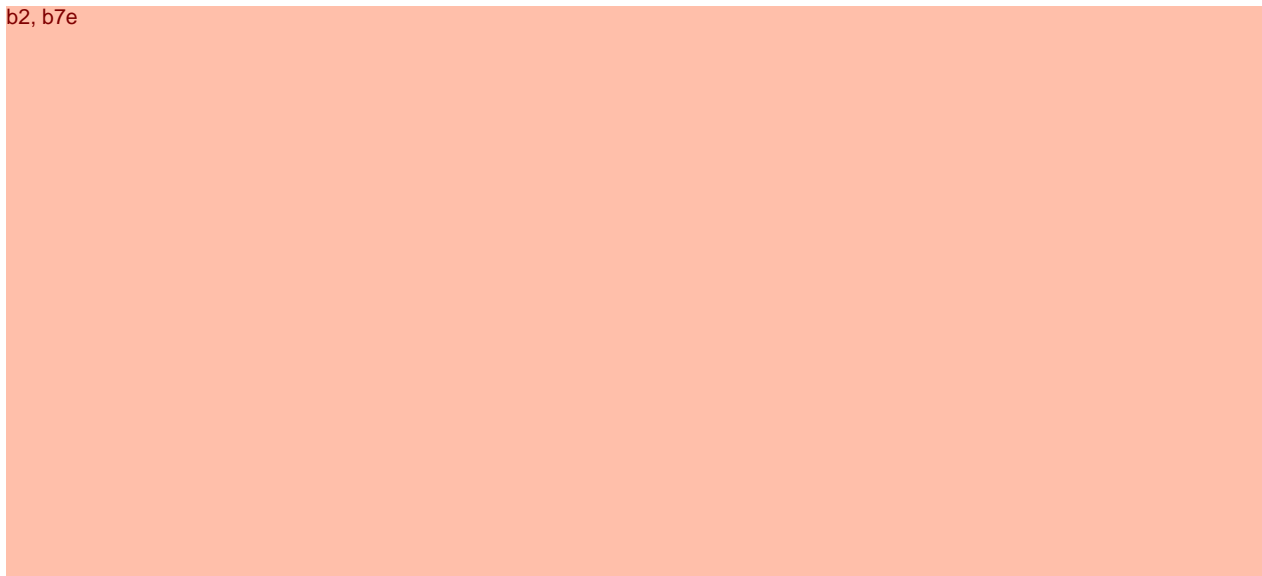
- a. 15 days from the date of the notice of the inadequacy of its basic safety management controls (submitting the petition within 15 days may prevent the FA from issuing a final decision before the prohibitions take effect); or
- b. 90 days of the date when it was initially notified under § 385.319(c) that its basic safety management controls were inadequate; or
90 days after it was notified that its corrective action under § 385.319(c) was insufficient and its basic safety management controls remain inadequate.

Illustration 15-9 outlines the entire safety audit and administrative review process.

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1.5.7.2 Illustration 15-1 Pass SA Letter



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 2006

In reply refer to:
Your USDOT No.: b6, b7c, b4

MC Number: b6, b7c, b4

b6, b7c, b4



Dear b6, b7c, b4 :

This letter informs you that, based on the results of the Safety Audit conducted on your company on b6, b7c, b4, the Federal Motor Carrier Safety Administration (FMCSA) has determined that b6, b7c, b4 continue to operate within the United States.

However, the agency did observe deficiencies while conducting the audit and you are encouraged to take appropriate action(s) promptly to comply with the regulations specified below:

Driver Question 1 - Driver Qualification Files, Section 391.51(a) Driver Question 5 - Driving/Employment History, Section 391.51(b)(2) Operations Question 4 - 10/11 Hour Rule, Section 395.3(a)(1) Operations Question 5 - 14/15 Hour Rule, Section 395.3(a)(2)

Please contact your local FMCSA Division Administrator listed below if you have any questions concerning these deficiencies:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
300 EAST 8TH STREET, SUITE 865
AUSTIN, TX 78701
Telephone No.: 512-424-2699

You are reminded that as a "New Entrant," the FMCSA will continue to evaluate your safety management practices and monitor your on-road performance prior to granting you permanent USDOT registration. You must maintain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period. Failure to comply with Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs) may result in the revocation of your USDOT registration.

If you have any questions concerning your New Entrant Status, please call the FMCSA Information Systems Division at (202) 366-4023.

Sincerely,



Charles A. Horan, III
Director, Office of Enforcement and Compliance



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 2006

In reply refer to
Your USDOT No.: b6, b7c,
h4

MC Number: b6, b7c,
h4

b6, b7c, b4

Dear b6, b7c, b4 :

This letter informs you that, based on the results of the Safety Audit conducted on your company on b6, b7c, b4, the Federal Motor Carrier Safety Administration (FMCSA) has determined that you may continue to operate within the United States.

You are reminded that as a "New Entrant," the FMCSA will continue to evaluate your safety

management practices and monitor your on-road performance prior to granting you permanent USDOT registration. You must maintain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period. Failure to comply with Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs) may result in the revocation of your USDOT registration.

If you have any questions concerning your New Entrant Status, please call the FMCSA Information Systems Division at (202) 366-4023.

Sincerely,



Charles A. Horan, III
Director, Office of Enforcement and Compliance



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 2006

In reply refer to
Your USDOT No.: b6, b7c,
b4

MC Number: b6, b7c,
b4

b6, b7c, b4

Dear b6, b7c, b4 :

This letter b6, b7c, b4 you that, based on the results of the Safety Audit conducted on your company on b6, b7c, b4 the Federal Motor Carrier Safety Administration (FMCSA) has determined t b6, b7c, b4 continue to operate within the United States.

However, the agency did observe deficiencies while conducting the audit and you are encouraged to take appropriate action(s) promptly to comply with the regulations specified below:

Driver Question 6 - Drug/Alcohol Testing Program, Section 382.115(a) Driver
Question 13 - Random Drug Testing Program, Section 382.305 Operations Question 3 -
Maintaining Record of Duty Status, Section 395.8(k)(1)

Please contact your local FMCSA Division Administrator listed below if you have any questions concerning these deficiencies:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
545 JOHN KNOX ROAD, ROOM 102
TALLAHASSEE, FL 32303
Telephone No.: 850-942-9338

You are reminded that as a "New Entrant," the FMCSA will continue to evaluate your safety

management practices and monitor your on-road performance prior to granting you permanent USDOT registration. You must maintain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period. Failure to comply with Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs) may result in the revocation of your USDOT registration.

If you have any questions concerning your New Entrant Status, please call the FMCSA Information Systems Division at (202) 366-4023.

Sincerely,



Charles A. Horan, III
Director, Office of Enforcement and Compliance



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 2006

In reply refer to
Your USDOT No.: b6, b7c,
h4

MC Number: b6, b7c,
h4

b6, b7c, b4

Dear b6, b7c, b4 :

This letter informs you that, based on the results of the Safety Audit conducted on your company on b6, b7c, b4, the Federal Motor Carrier Safety Administration (FMCSA) has determined that you may continue to operate within the United States.

You are reminded that as a "New Entrant," the FMCSA will continue to evaluate your safety management practices and monitor your on-road performance prior to granting you permanent USDOT registration. You must maintain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period. Failure to comply with Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs) may result in the revocation of your USDOT registration.

If you have any questions concerning your New Entrant Status, please call the FMCSA Information Systems Division at (202) 366-4023.

Sincerely,



Charles A. Horan, III
Director, Office of Enforcement and
Compliance



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 2006

In reply refer to
Your USDOT No.: b6, b7c,
b4

MC Number: b6, b7c, b4

b6, b7c, b4

Dear b6, b7c, b4

This letter informs you that, based on the results of the Safety Audit conducted on your company on b6, b7c, b4, the Federal Motor Carrier Safety Administration (FMCSA) has determined that you may continue to operate within the United States.

However, the agency did observe deficiencies while conducting the audit and you are encouraged to take appropriate action(s) promptly to comply with the regulations specified below:

Driver Question 6 - Drug/Alcohol Testing Program, Section 382.115(a)

Please contact your local FMCSA Division Administrator listed below if you have any questions concerning these deficiencies:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
300 EAST 8TH STREET, SUITE 865
AUSTIN, TX 78701
Telephone No.: 512-424-2699

You are reminded that as a "New Entrant," the FMCSA will continue to evaluate your safety management practices and monitor your on-road performance prior to granting you permanent USDOT registration. You must maintain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period. Failure to comply with Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs) may result in the revocation of your USDOT registration.

If you have any questions concerning your New Entrant Status, please call the FMCSA Information Systems Division at (202) 366-4023.

Sincerely,

A handwritten signature in black ink that reads "Charles A. Horan, III".

Charles A. Horan, III

Director, Office of Enforcement and
Compliance



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 2006

In reply refer to
Your USDOT No.: b6, b7c,
b4

MC Number: b6, b7c, b4

b6, b7c, b4

Dear b6, b7c, b4 :

This letter informs you that, based on the results of the Safety Audit conducted on your company on b6, b7c, b4 the Federal Motor Carrier Safety Administration (FMCSA) has determined that you are permitted to continue to operate within the United States.

However, the agency did observe deficiencies while conducting the audit and you are encouraged to take appropriate action(s) promptly to comply with the regulations specified below:

Driver Question 1 - Driver Qualification Files, Section 391.51(a) Driver Question
5 - Driving/Employment History, Section 391.51(b)(2) Maintenance Question 1 -
Maintenance Files, Section 396.3(b)

Please contact your local FMCSA Division Administrator listed below if you have any questions concerning these deficiencies:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
300 EAST 8TH STREET, SUITE 865
AUSTIN, TX 78701
Telephone No.: 512-424-2699

You are reminded that as a "New Entrant," the FMCSA will continue to evaluate your safety management practices and monitor your on-road performance prior to granting you permanent USDOT registration. You must maintain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period. Failure to comply with Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs) may result in the revocation of your USDOT registration.

If you have any questions concerning your New Entrant Status, please call the FMCSA Information Systems Division at (202) 366-4023.

Sincerely,

Charles A. Horan, III
Director, Office of Enforcement and

Compliance



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 2006

In reply refer to
Your USDOT No.: b6, b7c,
b4

MC Number: b6, b7c,
b4

b6, b7c, b4

Dear b6, b7c, b4 :

This letter informs you that, based on the results of the Safety Audit conducted on your company on b6, b7c, b4, the Federal Motor Carrier Safety Administration (FMCSA) has determined that you may continue to operate within the United States.

However, the agency did observe deficiencies while conducting the audit and you are encouraged to take appropriate action(s) promptly to comply with the regulations specified below:

Driver Question 1 - Driver Qualification Files, Section 391.51(a) Driver Question 3 - Driver Medical Certificates, Section 391.45(a), 391.45(b) Driver Question 5 - Driving/Employment History, Section 391.51(b)(2) Driver Question 11 - Pre-Employment Drug Testing, Section 382.301(a) Driver Question 13 - Random Drug Testing Program, Section 382.305 Operations Question 12 - False Record of Duty Status, Section 395.8(e) Maintenance Question 3 - Driver Vehicle Inspection Reports, Section 396.11(a)

Please contact your local FMCSA Division Administrator listed below if you have any questions concerning these deficiencies:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
300 EAST 8TH STREET, SUITE 865
AUSTIN, TX 78701
Telephone No.: 512-424-2699

You are reminded that as a "New Entrant," the FMCSA will continue to evaluate your safety management practices and monitor your on-road performance prior to granting you permanent USDOT registration. You must maintain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period. Failure to comply with Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs) may result in the revocation of your USDOT registration.

If you have any questions concerning your New Entrant Status, please call the FMCSA Information Systems Division at (202) 366-4023.

Sincerely,



Charles A. Horan, III
Director, Office of Enforcement and
Compliance



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 2006

In reply refer to
Your USDOT No.: b6, b7c,
b4

b6, b7c, b4

Dear b6, b7c, b4 :

This letter b6, b7c, b4 you that, based on the results of the Safety Audit conducted on your company on b6, b7c, b4, the Federal Motor Carrier Safety Administration (FMCSA) has determined t continue to operate within the United States.

However, the agency did observe deficiencies while conducting the audit and you are encouraged to take appropriate action(s) promptly to comply with the regulations specified below:

General Question 2 - Evidence of Financial Responsibility (MCS-90), Section 387.7
(d) Driver Question 1 - Driver Qualification Files, Section 391.51(a) Driver
Question 5 - Driving/Employment History, Section 391.51(b)(2) Driver Question 6 -
Drug/Alcohol Testing Program, Section 382.115(a) Operations Question 1 - Making
Record of Duty Status, Section 395.8(a) Operations Question 13 - Disciplinary
Policy, Section
Operations Question 14 - 100 Air-Mile Radius Drivers, Section 395.1(e) Maintenance
Question 1 - Maintenance Files, Section 396.3(b) Maintenance Question 2 - Periodic
Inspection, Section 396.17(a) Maintenance Question 3 - Driver Vehicle Inspection
Reports, Section 396.11(a) Maintenance Question 6 - Qualified Inspectors, Section
396.19 OTHER Question 6 - , Section 13901

Please contact your local FMCSA Division Administrator listed below if you have any questions concerning these deficiencies:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
300 EAST 8TH STREET, SUITE 865
AUSTIN, TX 78701
Telephone No.: 512-424-2699

You are reminded that as a "New Entrant," the FMCSA will continue to evaluate your safety management practices and monitor your on-road performance prior to granting you permanent USDOT registration. You must maintain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period. Failure to comply with Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations

(HMRs) may result in the revocation of your USDOT registration. If you have any questions concerning your New Entrant Status, please call the FMCSA Information Systems Division at (202) 366-4023.

Sincerely,



Charles A. Horan, III
Director, Office of Enforcement and Compliance



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 2006

In reply refer to
Your USDOT No.: b6, b7c,
h4

MC Number: b6, b7c, b4

b6, b7c, b4

Dear b6, b7c, b4 :

This letter informs you that, based on the results of the Safety Audit conducted on your company on b6, b7c, b4 the Federal Motor Carrier Safety Administration (FMCSA) has determined that b6, b7c, b4 continue to operate within the United States.

However, the agency did observe deficiencies while conducting the audit and you are encouraged to take appropriate action(s) promptly to comply with the regulations specified below:

Driver Question 1 - Driver Qualification Files, Section 391.51(a) Driver Question 3 - Driver Medical Certificates, Section 391.45(a), 391.45(b) Driver Question 6 - Drug/Alcohol Testing Program, Section 382.115(a) Driver Question 13 - Random Drug Testing Program, Section 382.305 Operations Question 15 - State and Local Laws, Section 392.2 Maintenance Question 7 - Periodic Maintenance Program, Section 396.3

Please contact your local FMCSA Division Administrator listed below if you have any questions concerning these deficiencies:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
545 JOHN KNOX ROAD, ROOM 102
TALLAHASSEE, FL 32303
Telephone No.: 850-942-9338

You are reminded that as a "New Entrant," the FMCSA will continue to evaluate your safety management practices and monitor your on-road performance prior to granting you permanent USDOT registration. You must maintain minimum safety standards in order to continue operating

in interstate commerce during and after the 18-month period. Failure to comply with Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs) may result in the revocation of your USDOT registration. If you have any questions concerning your New Entrant Status, please call the FMCSA Information Systems Division at (202) 366-4023.

Sincerely,



Charles A. Horan, III
Director, Office of Enforcement and Compliance



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 2006

In reply refer to
Your USDOT No.: b6, b7c,
h4

MC Number: b6, b7c,
h4

b6, b7c, b4

Dear b6, b7c, b4

This letter informs you that, based on the results of the Safety Audit conducted on your company on b6, b7c, b4, the Federal Motor Carrier Safety Administration (FMCSA) has determined that you are permitted to continue to operate within the United States.

However, the agency did observe deficiencies while conducting the audit and you are encouraged to take appropriate action(s) promptly to comply with the regulations specified below:

Driver Question 1 - Driver Qualification Files, Section 391.51(a) Driver Question 5 - Driving/Employment History, Section 391.51(b)(2) Driver Question 6 - Drug/Alcohol Testing Program, Section 382.115(a) Maintenance Question 1 - Maintenance Files, Section 396.3(b)

Please contact your local FMCSA Division Administrator listed below if you have any questions concerning these deficiencies:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
300 EAST 8TH STREET, SUITE 865
AUSTIN, TX 78701
Telephone No.: 512-424-2699

You are reminded that as a "New Entrant," the FMCSA will continue to evaluate your safety management practices and monitor your on-road performance prior to granting you permanent

USDOT registration. You must maintain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period. Failure to comply with Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs) may result in the revocation of your USDOT registration.

If you have any questions concerning your New Entrant Status, please call the FMCSA Information Systems Division at (202) 366-4023.

Sincerely,



Charles A. Horan, III
Director, Office of Enforcement and Compliance



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 2006

In reply refer to
Your USDOT No.: b6, b7c,
b4

b6, b7c, b4

Dear b6, b7c, b4

This letter informs you that, based on the results of the Safety Audit conducted on your company on b6, b7c, b4, the Federal Motor Carrier Safety Administration (FMCSA) has determined that you may continue to operate within the United States.

However, the agency did observe deficiencies while conducting the audit and you are encouraged to take appropriate action(s) promptly to comply with the regulations specified below:

Driver Question 1 - Driver Qualification Files, Section 391.51(a) Driver Question 5 - Driving/Employment History, Section 391.51(b)(2) Driver Question 11 - Pre-Employment Drug Testing, Section 382.301(a)

Please contact your local FMCSA Division Administrator listed below if you have any questions concerning these deficiencies:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
300 EAST 8TH STREET, SUITE 865
AUSTIN, TX 78701
Telephone No.: 512-424-2699

You are reminded that as a "New Entrant," the FMCSA will continue to evaluate your safety

management practices and monitor your on-road performance prior to granting you permanent USDOT registration. You must maintain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period. Failure to comply with Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs) may result in the revocation of your USDOT registration.

If you have any questions concerning your New Entrant Status, please call the FMCSA Information Systems Division at (202) 366-4023.

Sincerely,



Charles A. Horan, III
Director, Office of Enforcement and Compliance



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 2006

In reply refer to
Your USDOT No.: b6, b7c,
h4

MC Number: b6, b7c,
h4

b6, b7c, b4

Dear b6, b7c, b4 :

This letter b6, b7c, b4 you that, based on the results of the Safety Audit conducted on your company on b6, b7c, b4, the Federal Motor Carrier Safety Administration (FMCSA) has determined that b6, b7c, b4 continue to operate within the United States.

You are reminded that as a "New Entrant," the FMCSA will continue to evaluate your safety management practices and monitor your on-road performance prior to granting you permanent USDOT registration. You must maintain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period. Failure to comply with Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs) may result in the revocation of your USDOT registration.

If you have any questions concerning your New Entrant Status, please call the FMCSA Information Systems Division at (202) 366-4023.

Sincerely,



Charles A. Horan, III
Director, Office of Enforcement and
Compliance



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 2006

In reply refer to
Your USDOT No.: b6, b7c,
h4

MC Number: b6, b7c,
h4

b6, b7c, b4

Dear b6, b7c, b4 :

This letter informs you that, based on the results of the Safety Audit conducted on your company on b6, b7c, b4, the Federal Motor Carrier Safety Administration (FMCSA) has determined that you are permitted to continue to operate within the United States.

However, the agency did observe deficiencies while conducting the audit and you are encouraged to take appropriate action(s) promptly to comply with the regulations specified below:

General Question 2 - Evidence of Financial Responsibility (MCS-90), Section 387.7
(d) General Question 3 - Accident Register of Recordable Accidents, Section 390.15
(b)(1) Driver Question 1 - Driver Qualification Files, Section 391.51(a) Driver
Question 5 - Driving/Employment History, Section 391.51(b)(2) Driver Question 6 -
Drug/Alcohol Testing Program, Section 382.115(a) Operations Question 1 - Making
Record of Duty Status, Section 395.8(a) Operations Question 13 - Disciplinary
Policy, Section
Maintenance Question 1 - Maintenance Files, Section 396.3(b) Maintenance Question
2 - Periodic Inspection, Section 396.17(a) Maintenance Question 3 - Driver Vehicle
Inspection Reports, Section 396.11(a)

Please contact your local FMCSA Division Administrator listed below if you have any questions concerning these deficiencies:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
300 EAST 8TH STREET, SUITE 865
AUSTIN, TX 78701
Telephone No.: 512-424-2699

You are reminded that as a "New Entrant," the FMCSA will continue to evaluate your safety management practices and monitor your on-road performance prior to granting you permanent USDOT registration. You must maintain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period. Failure to comply with Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs) may result in the revocation of your USDOT registration. If you have any questions concerning your New Entrant Status, please call the FMCSA Information Systems Division at (202) 366-4023.

Sincerely,



Charles A. Horan, III
Director, Office of Enforcement and
Compliance

1.5.7.3 Illustration 15-2 Corrective Action Hand Out



U.S. DEPARTMENT OF TRANSPORTATION FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Motor Carrier's Corrective Action to Remedy Its Safety Management Practices (49 CFR Part 385.325)

The Federal Motor Carrier Safety Administration (FMCSA), **Insert State** Division Office, has adopted the following procedures when a motor carrier submits evidence of corrective action to remedy its safety management practices in accordance with 49 CFR 385.325. The motor carrier must submit their request to the Division Administrator, Federal Motor Carrier Safety Administration, in which the motor carrier maintains its principal place of business. The motor carrier's request must include a written description of corrective actions taken and supporting documentation of these corrective actions that show the carrier has adequate basic safety management controls in place. Also, the motor carrier's roadside safety performance will be evaluated to ensure the motor carrier has the basic safety management controls implemented to operate safely.

The FMCSA, **Insert State** Division Office, will require a description of corrective action taken; *hereinafter referred to as the Motor Carrier's Safety Management Plan (SMP)*. A copy of the SMP shall be prepared and submitted to the following office:

Insert Name of DA
Insert Division Office Address

The SMP must address and include documentation indicating that corrective action has been taken for each deficiency identified in the received "Safety Audit Failure Notice".

The SMP must include, but is not limited to the following:

1. A copy of the received "Safety Audit Failure Notice".
2. The SMP must identify why the areas of noncompliance were permitted to occur.
3. An explanation of corrective actions must be completed for each failed regulatory section included in the "Safety Audit Failure Notice". **Supporting documentation of corrective action must be submitted with this request.** For example, documentation may include items such as new policies and procedures, training programs, sign in lists, copies of missing drug/alcohol tests, etc.
4. When a carrier is in noncompliance with the regulation of 49 CFR Part 395, involving record of duty status (logs and/or time cards) as indicated on the written "Safety Audit Failure Notice", documentation showing hours of service checks and false record of duty status checks and their results must be included in the SMP for the most recent 30 day period. Documentation must include a summary report of your findings and an explanation of what corrective actions have been taken.
5. An explanation of what further corrective actions, if any, will be taken in the near future, such as hiring, training, new safety programs, reorganization of departments, purchasing of safety programs/equipment, etc.? Documentation must include a detailed summary of the planned action and dates of implementation.
6. Any additional documentation that relates to motor carrier safety and the prevention of crashes and hazardous materials incidents.
7. If your recordable accident rate per million miles (Accident Factor) was found to be unsatisfactory as noted on the received "Safety Audit Failure Notice", you must include, but is not limited to, defensive driving training and an accident countermeasure program as part of the SMP.
8. The SMP **must** include a written statement, signed by a corporate officer or in the case of a proprietorship, by **all** proprietors, certifying that you **will operate in compliance with the Federal Motor Carrier Safety Regulations, the Hazardous Material Regulations and their Safety Management Plan and**

the motor carrier's operation currently meets the below safety standard and factors:

To meet the safety standard, the motor carrier shall demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

- (a) Commercial driver's license standard violations (Part 383),
- (b) Inadequate levels of financial responsibility (Part 387),
- (c) The use of unqualified drivers (Part 391),
- (d) Improper use and driving of motor vehicles (Part 392),
- (e) Unsafe vehicles operating on the highways (Part 393),
- (f) Failure to maintain accident registers and copies of accident reports (Part 390),
- (g) The use of fatigued drivers (Part 395),
- (h) Inadequate inspection, repair, and maintenance of vehicles (Part 396),
- (i) Transportation of hazardous materials, driving and parking rule violations (Part 397),
- (j) Violation of hazardous materials regulations (Parts 170 through 177), and
- (k) Motor vehicle accidents and hazardous materials incidents.

1.5.7.4 Illustration 15-3 Failed SA Letter



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.

Washington, D.C. 20590

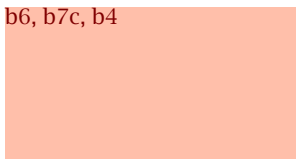
May 24, 2006

In reply refer to:

Your USDOT No.: b6, b7C,
h4

MC Number: b6, b7C,
h4

b6, b7c, b4



IMPORTANT - SAFETY AUDIT FAILURE NOTICE

Dear GERALD SUMMERS:

s to inform you that as a result of a Safety Audit conducted on your operation on b6, b7c, b4, the Federal Motor Carrier Safety Administration (FMCSA) has determined that you established the basic safety management controls necessary to ensure safe operations within the United States. The audit was required under Part 385 of Title 49 of the Code of Federal Regulations (specifically 49 CFR Part 385.307(b)) when your company applied as a "New Entrant" to operate in interstate commerce within the United States.

In accordance with section 385.319, you are hereby advised that your USDOT New Entrant registration will be REVOKED AND YOU WILL BE FORBIDDEN TO OPERATE IN INTERSTATE COMMERCE unless you take necessary action(s) to comply with the regulations specified below WITHIN 60 DAYS OF THE DATE OF THIS LETTER TO REMEDY YOUR SAFETY MANAGEMENT PRACTICES.

Driver Question 1 - Driver Qualification Files, Section 391.51(a) Driver Question 3 - Driver Medical Certificates, Section 391.45(a), 391.45(b) Driver Question 5 - Driving/ Employment History, Section 391.51(b)(2) Driver Question 11 - Pre-Employment Drug Testing, Section 382.301(a) Operations Question 2 - Submitting Record of Duty Status, Section 395.8 (i) Operations Question 3 - Maintaining Record of Duty Status, Section 395.8(k)(1) Operations Question 5 - 14/15 Hour Rule, Section 395.3(a)(2) Operations Question 12 - False Record of Duty Status, Section 395.8(e) Operations Question 13 - Disciplinary Policy, Section Operations Question 15 - State and Local Laws, Section 392.2 Maintenance Question 1 - Maintenance Files, Section 396.3(b) Maintenance Question 2 - Periodic Inspection, Section 396.17(a) Maintenance Question 3 - Driver Vehicle Inspection Reports, Section 396.11(a) Maintenance Question 6 - Qualified Inspectors, Section 396.19 Maintenance Question 7 - Periodic Maintenance Program, Section 396.3

Evidence of corrective action, together with any supporting documentation, should be forwarded to:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
ATTN: NEW CARRIER AUDIT, ARKANSAS HIGHWAY POLICE
P.O. BOX 2779
LITTLE ROCK, AR 72203
Telephone No.: 501-569-2911

You may also, depending on State laws, be subject to suspension and/or revocation of vehicle registration privileges.

If you believe that the FMCSA has committed an error in determining that your basic safety management controls were inadequate, under 49 CFR 385.327, you may request the FMCSA to conduct an administrative review. The request must explain the error you believe the FMCSA committed in its determination and include a list of all factual and procedural issues in dispute. Any other information or documents that support your argument also should be included.

Under section 385.327(e)(1), the request must be submitted within 90 days from the date of this notice and mailed to the Field Administrator located at:

(over)
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
1800 CENTURY BOULEVARD, SUITE 1700
ATLANTA, GA 30345
Telephone No.: 404-327-7400

A copy of the request also must be sent to the Division Office listed above. Although you may submit your request for an administrative review any time within 90 days of the date of this notice, if we receive your request within 15 days of the date of this notice, in accordance with Section 385.327(b), the FMCSA will issue a written decision before your registration is revoked and you are prohibited from operating in interstate commerce.

If your USDOT New Entrant registration is revoked you may reapply no sooner than 30 days after the date of the revocation. Should that occur, you would need to initiate the application process from the beginning, including filing the appropriate forms. Additionally, you will be

required to demonstrate that you have corrected all the violations described above and taken all the actions specified to remedy your safety management practices.

Please contact your local FMCSA Division Administrator if you have any questions.

Sincerely,



Charles A. Horan, III
Director, Office of Enforcement and
Compliance

1.5.7.5 Illustration 15-4 Corrective Action Decision Memo



U.S. Department
Of Transportation
Federal Motor Carrier
Safety Administration

Memorandum

Subject: Decision on whether carrier has implemented the necessary corrective actions (385.325) Date: August 4, 2006
Insert Carrier Name (USDOT #XXXXXX)

Upon completion of a review of the above subject's Safety Management Plan (SMP) and the other below information, it has been determined that the motor carrier **has or has not** taken acceptable corrective actions.

Besides the SMP, the below items have been considered in making the decision whether the carrier has implemented the necessary corrective actions:

1. Any open complaints on file regarding the motor carrier's compliance
2. The evaluation of the carrier's current SafeStat scores
3. The review of the carrier's current Carrier Profile

The following information is being submitted:

1. Date of Safety Audit: **XX/XX/XX**

2. Date of the SMP: **XX/XX/XX**

3. Division Administrator's opinion regarding the motor carrier's corrective actions:

Insert Opinion of why you believe the corrective actions are acceptable or not acceptable.

4. Does the information submitted, though not enough to deem the corrective actions as acceptable, warrant an extension of time (385.323)? **Yes, No, or N/A**

1.5.7.6 Illustration 15-5 Corrective Action Acceptable letter

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION



Include Division Address

October 12, 2004

Insert Carrier's Name
Insert Carrier's Address

Re: Corrective Actions Accepted

Dear **Ms./Mr. XXX**

This will acknowledge receipt of your Safety Management Plan (SMP) received on **INSERT DATE**, addressing the noncompliance identified during the Safety Audit conducted on **INSERT AUDIT DATE**.

Your SMP provided evidence to show that you have implemented corrective action to remedy its safety management practices pursuant to 49 CFR 385.325.

You will remain in the New Entrant program for 18 months from the date you entered into the program. FMCSA will continue to evaluate your safety management practices and monitor your on-road performance while you are in the program and prior to granting you permanent registration. You must maintain adequate safety standards and comply with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs) in order to continue operating in interstate commerce during and after this 18-month period. Failure to comply with these requirements may result in the revocation of your New Entrant or permanent registration authority.

If you have any questions regarding this matter, please contact **INSERT APPROPRIATE CONTACT** at **XXX-XXX-XXXX**.

Sincerely,

INSERT DA'S NAME
Division Administrator

1.5.7.7 Illustration 15-6 Corrective Action Unacceptable letter

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION



Include Division Address

October 12, 2004

Insert Carrier's Name
Insert Carrier's Address

Re: Safety Management Plan - Unacceptable Evidence of Corrective Action

Dear **Ms./Mr. XXX**

This will acknowledge receipt of your Safety Management Plan (SMP) received on **INSERT DATE**, addressing the noncompliance identified during the Safety Audit conducted on **INSERT AUDIT DATE**.

As documented in the Safety Audit, **INSERT CARRIER NAME** had not yet established the basic safety management controls to ensure safe operations.

Your SMP did not include substantial evidence to show that **INSERT CARRIER NAME** has implemented corrective action to remedy its safety management practices pursuant to 49 CFR 385.325. As required by 49 CFR 385.325, the carrier must submit a *written response* of corrective actions taken that may be relied upon as a basis to determine if **INSERT CARRIER NAME** has established the basic safety management controls to ensure safe operations. Therefore, your SMP has been found to be unacceptable evidence of corrective action.

The company has submitted a SMP but has failed to submit sufficient documentation concerning.....

PROVIDE AN EXPLANATION OF WHY THE PLAN WAS NOT ACCEPTABLE

Please read the attached guidelines carefully since the above guidance are examples and may not cover everything you need to submit in the Safety Management Plan. I have attached a copy of the “Motor Carrier’s Corrective Action to Remedy Its Safety Management Practices” to assist you if you decide to resubmit your SMP. You may submit additional documents for re-consideration prior to the scheduled out of service date as specified in 385.319(c). If you choose to do so, the additional documents must be submitted to **INSERT DA NAME AND ADDRESS**.

You may petition for an administrative review pursuant to 49 CFR 385.327. If you choose to do so, your petition & copy of the Safety Audit must be submitted in writing to Doug Sawin, Field Administrator, Federal Motor Carrier Safety Administration, 19900 Governors Drive, Suite 210, Olympia Fields, IL 60461-1021. A copy of the 49 CFR 385.327 is enclosed.

If you have any questions regarding this matter please contact **INSERT APPROPRIATE CONTACT** at **XXX-XXX-XXXX**.

Sincerely,

INSERT DA'S NAME
Division Administrator

1.5.7.8 Illustration 15-7 Sample Revocation Letter



U.S. Department of
Transportation

**Federal Motor Carrier
Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 2006

b6, b7c, b4

**ORDER TO REVOKE "NEW ENTRANT" REGISTRATION
AND CEASE ALL INTERSTATE TRANSPORTATION
U.S. DOT Number: b6, b7c, b4**

Dear b6, b7c, b4 :

This Order is issued pursuant to 49 CFR 385.325(b). Previously, (See, Safety Audit Fail Letter dated March 15, 2006) you were notified that your New Entrant Registration would be revoked unless you presented evidence of necessary corrective action within 60 DAYS. Because you have failed to submit sufficient evidence of the necessary corrective action, your New Entrant Registration is hereby revoked, effective immediately. You must immediately cease all Interstate motor carrier operations in the United States.

Failure to comply with this Order may subject the carrier to penalty provisions in 49 USC 521 (b)(2)(A) not to exceed \$11,000 for each offense.

In accordance with 49 CFR 385.327, you may request an administrative review if you believe the FMCSA has committed an error in determining that your basic safety management controls were inadequate and/or that your corrective action under section 385.319(c) was insufficient. Under section 385.327(e)(1), the request must be submitted within 90 days of the date you were initially notified that your basic safety management controls were inadequate or under section 385.327(e)(2) within 90 days of the date that you were notified the FMCSA determined your corrective actions were insufficient. The Field Administrator's decision will constitute final agency action. Your request must be submitted to:

U.S. DEPARTMENT OF TRANSPORTATION

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
1800 CENTURY BOULEVARD, SUITE 1700
ATLANTA, GA 30345
Telephone No.: 404-327-7400

Under section 385.329, you may reapply no sooner than 30 days after the date of this revocation. Should you do so, you will need to initiate the application process from the beginning. You also will be required to demonstrate that you have corrected the violations that resulted in revocation of your registration and otherwise ensure that you have adequate basic safety management controls.

Contact your local FMCSA office if you have questions about what corrective actions must be submitted and where to submit them.

Sincerely,



Charles A. Horan, III
Director, Office of Enforcement and
Compliance

1.5.7.9 Illustration 15-8 NE Good Faith Extension Letter

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
Insert Division's Address



Insert Date

Insert Carrier's Name
Insert Carrier's Address

Dear **Mr./Mrs. XXXX**:

We have reviewed the information provided in your Safety Management Plan (SMP) and have concluded that **Insert Carrier's Name** has exhibited a good faith effort to improve its safety status. However, there is insufficient information at this time to make a determination regarding the adequacy of the corrective actions. Therefore, we are allowing **Insert Carrier's Name** to continue to operate in interstate commerce for an additional **XX** days. This

extends your ability to operate in interstate commerce to **Insert Date, 200X**. Prior to this date, you should finalize, improve and resubmit your Safety Management Plan.

If you have any questions regarding this matter please contact **Division Office Contact** at **XXX-XXX-XXXX**.

Sincerely,

Insert DA's Name
Division Administrator

Enclosures



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

**Motor Carrier's Corrective Action to Remedy
Its Safety Management Practices (49 CFR Part 385.325)**

The Federal Motor Carrier Safety Administration (FMCSA), **Insert State** Division Office, has adopted the following procedures when a motor carrier submits evidence of corrective action to remedy its safety management practices in accordance with 49 CFR 385.325. The motor carrier must submit their request to the Division Administrator, Federal Motor Carrier Safety Administration, in which the motor carrier maintains its principal place of business. The motor carrier's request must include a written description of corrective actions taken and supporting documentation of these corrective actions that show the carrier has adequate basic safety management controls in place. Also, the motor carrier's roadside safety performance will be evaluated to ensure the motor carrier has the basic safety management controls implemented to operate safely.

The FMCSA, **Insert State** Division Office, will require a description of corrective action taken; *hereinafter referred to as the Motor Carrier's Safety Management Plan (SMP)*. A copy of the SMP shall be prepared and submitted to the following office:

Insert Name of DA
Insert Division Office Address

The SMP must address and include documentation indicating that corrective action has been taken for each deficiency identified in the received "Safety Audit Failure Notice".

The SMP must include, but is not limited to the following:

1. A copy of the received "Safety Audit Failure Notice".
2. The SMP must identify why the areas of noncompliance were permitted to occur.
3. An explanation of corrective actions must be completed for each failed regulatory section included in the "Safety Audit Failure Notice". **Supporting documentation of corrective action must be submitted with this request.** For example, documentation may include items such as new policies and procedures, training programs, sign in lists, copies of missing drug/alcohol tests, etc.
4. When a carrier is in noncompliance with the regulation of 49 CFR Part 395, involving record of duty status (logs and/or time cards) as indicated on the written "Safety Audit Failure Notice", documentation showing hours of service checks and false record of duty status checks and their results must be included in the SMP for the most recent 30 day period. Documentation must include a summary report of your findings and an explanation of what corrective actions have been taken.
5. An explanation of what further corrective actions, if any, will be taken in the near future, such as hiring, training, new safety programs, reorganization of departments, purchasing of safety programs/equipment, etc.? Documentation must include a detailed summary of the planned action and dates of implementation.
6. Any additional documentation that relates to motor carrier safety and the prevention of crashes and hazardous materials incidents.
7. If your recordable accident rate per million miles (Accident Factor) was found to be unsatisfactory as noted on the received "Safety Audit Failure Notice", you must include, but is not limited to, defensive driving training and an accident countermeasure program as part of the SMP.
8. The SMP **must** include a written statement, signed by a corporate officer or in the case of a proprietorship, by **all** proprietors, certifying that you **will operate in compliance with the Federal Motor Carrier Safety Regulations, the Hazardous Material Regulations and their Safety Management Plan and the motor carrier's operation currently meets the below safety standard and factors:**

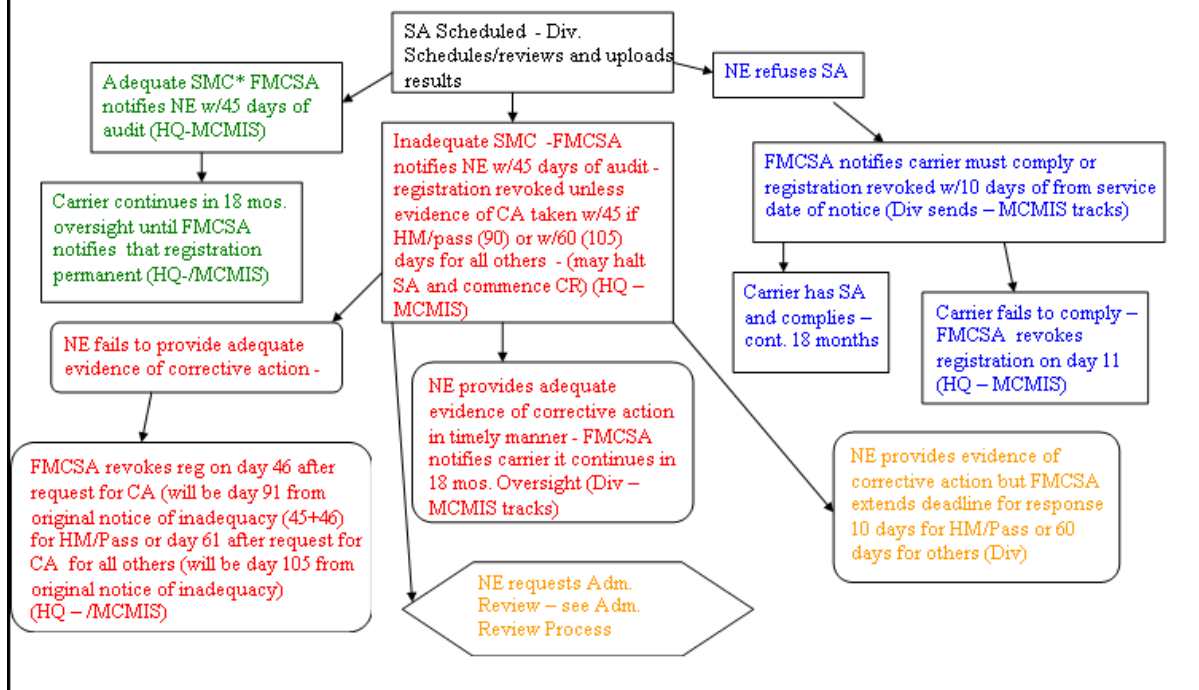
To meet the safety standard, the motor carrier shall demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

- (a) Commercial driver's license standard violations (Part 383),
- (b) Inadequate levels of financial responsibility (Part 387),
- (c) The use of unqualified drivers (Part 391),
- (d) Improper use and driving of motor vehicles (Part 392),
- (e) Unsafe vehicles operating on the highways (Part 393),
- (f) Failure to maintain accident registers and copies of accident reports (Part 390),
- (g) The use of fatigued drivers (Part 395),
- (h) Inadequate inspection, repair, and maintenance of vehicles (Part 396),
- (i) Transportation of hazardous materials, driving and parking rule violations (Part 397).
- (j) Violation of hazardous materials regulations (Parts 170 through 177), and
- (k) Motor vehicle accidents and hazardous materials incidents.

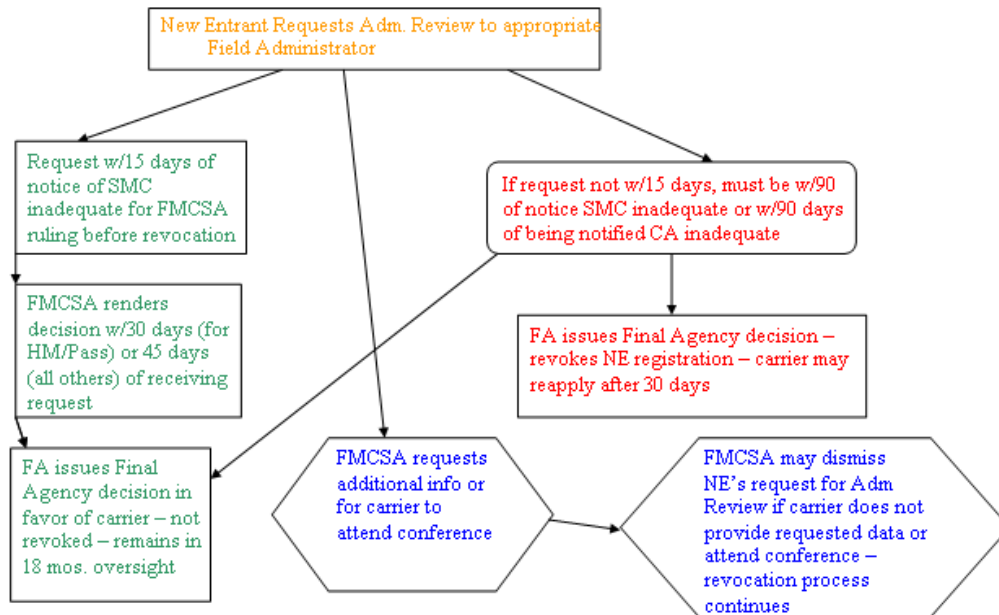
1.5.7.10 Illustration 15-9 Flow Charts

New Entrant Safety Program

NEW ENTRANT – SAFETY AUDIT PROCESS



New Entrant Safety Program Administrative Review Process



508 Description of New Entrant Safety Program Flow Charts

1.5.8 Safety Audit Part 395 - Hours of Service of Drivers

[Safety Audit Procedures](#)

[CAPRI Procedures](#)

1.5.8.1 SA Part 395 - Safety Audit Procedures

During your review of compliance with Part 395, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable hazardous materials) and passengers.

[General](#)

[Passengers](#)

[Interstate Operations versus Intrastate Operations](#)

[Seasonal Operations](#)

[Requesting Driver Lists](#)

[Selecting Driver's Time Records/Records of Duty Status to be Audited](#)

[Missing Records-of-Duty Status](#)

[Hours of Service – Maximum Driving Time](#)

[False Records of Duty Status](#)

b2, b7e



SA Part 395 - General

Are certain motor carrier operations allowed exemptions within Part 395?

Yes, ensure you are familiar with the various motor carrier operations defined within 395.1.

What happens when a carrier fails to have complete time records for 100 air-mile radius drivers?

Every single condition of the 100 air-mile radius exemption in § 395.1(e) must be fulfilled in order for a driver to be exempt from preparing a record-of-duty status. A failure to fulfill any condition of the exemption results in the application of the requirement to prepare a record-of-duty status.



SA Part 395 - Passengers

What are the procedures I should follow if I am investigating a motor carrier of passengers?

You should remember that Private Motor Carriers of Passengers (Nonbusiness) are not subject of the Safety Audit process. All other motor carriers of passengers (e.g. For-Hire and Private Motor Carrier of Passengers (Business)) are subject to the same requirements as motor carriers of property.

What specific issues should I be aware of when investigating a motor carrier of passengers?

- **Extra Board, Shape and Spare Drivers**

An **extra board, shape, or spare** driver is a driver who does not have assigned work, but remains at the terminal in order to handle an operational contingency such as driver absence or vehicle breakdown. In most cases, they should record their hours as “on duty, not driving” until they are dispatched on the road.

- **Relief drivers**

On long distance trips requiring straight-through driving, motor coach operators may send a relief driver ahead to take over driving responsibilities for the next part of the trip. The means by which this driver gets to the layover location can vary. Below are two scenarios and the correct recording of hours of service for each:

Scenario #1

Driver is driven, or uses public transportation (i.e. commercial aircraft or train) to get to or return from the layover location. In this instance, if the driver has at least 8 consecutive hours off-duty after reaching the layover destination or terminal before assuming any on-duty status, the time spent traveling at the direction of the motor carrier may be logged as off-duty. If there is less than 8 consecutive hours off-duty, the time traveling at the direction of the motor carrier must be recorded as on-duty, not driving.

Scenario #2

Driver drives himself/herself in an automobile (non-commercial motor vehicle) to the layover location or back to the terminal. Time spent driving a non-commercial motor vehicle at the direction of the motor carrier must be logged as on-duty, not driving.

- **Team drivers**

In order to log sleeper berth status, the motorcoach must be equipped with a sleeper berth meeting the criteria in section 393.76. There are no exceptions for motorcoach sleeper berths. Investigators should be aware that there are motorcoaches in operation that meet the sleeper berth requirements. If the motorcoach is not properly equipped with a sleeper berth that meets the criteria, and there is a team assigned to it, all time spent riding in the motorcoach (in the reclining position or not) must be recorded by the driver as on-duty, not driving and may not be recorded as sleeper berth duty status. The only exception would be a driver who is riding on the motorcoach to the destination and is afforded 8 consecutive hours off-duty after reaching the destination. In such case, the time spent riding on the motorcoach may be recorded as off-duty.

What are the supporting documents I may encounter that are unique to the passenger industry?

- Charter orders and itineraries are the passenger carrier’s shipping papers. Although

many are different in appearance, they usually contain the same information such as the carrier's name, driver's name, date, vehicle number, group being transported, origin and destination points, routes taken, and cost.

- Itineraries are similar to charter orders, but they list a detailed time report of the passenger carrier's trip. Itineraries will show arrival and destination times and dates. They are usually used during an extended charter trip.
- Most passenger carriers maintain charter orders and itineraries as a normal part of their business. Both of these documents as well as other supporting documentation should be compared against the driver's records of duty status to determine accuracy.
- In many instances, drivers will enter start and finish time on their trip envelopes, which can be used to verify their records of duty status. Major destination locations may maintain information regarding arrival and departure times for group tours. In-depth investigations may involve contacting the group that booked the charter for further verification.

SA Part 395 - Interstate Operations versus Intrastate Operations

What is our policy concerning drivers who operate both in intrastate and interstate commerce?

The hours of service requirements in Part 395 apply to all drivers seven days prior to an interstate trip and for the 7- or 8-day period following an interstate trip. The important points to remember are:

- Any driver who begins a trip in interstate commerce must continue to meet the requirements of 395.3(a) and (b) through the end of the next 7 to 8 consecutive days, depending on which rule the motor carrier operates under.
- The driver must continue to comply with the requirements of Part 395, even if he/she operates exclusively in intrastate commerce for the remainder of the 60-/70-hour period (i.e. 7-8 day schedule) at the end of the interstate trip. **New Rule Effective January 4, 2004 - The driver must also continue to comply with the 11- and 14-hour rules as well as the 60- or 70-hour rules for the remainder of that day, and the following 7 days (if the 60-hour rule was applicable) or 8 days (if the 70-hour rule was applicable).**
- A driver who begins a trip in interstate commerce, in a CMV, must have in his/her possession a copy of records of duty status for the previous 7 consecutive days, as required by 395.8(k)(2), unless they meet 395.1(e), even if the driver operated only in intrastate commerce during that 7-day period.
- **Note: During the 7-day period prior to the interstate trip the driver may follow the state regulations applicable to intrastate commerce with regard to the state's CMV driving and on-duty requirements.**
- FMCSA investigators should cite drivers for violations of the 11- or 14-hour rules or the 60- or 70-hour rules that are committed while on the interstate trip or during the 7 or 8 days after completing the interstate trip (depending on which rule the motor carrier

operates under). The driver remains subject to Part 395 for 7 or 8 days after a trip in interstate commerce even if he/she drives only in intrastate commerce for that period.

- FMCSA investigators should be aware that any period of 7 or 8 consecutive days may end with the beginning of any off duty period of 34 or more consecutive hours (34-hour restart). Note: This provision does not apply if a driver is placed out-of-service due to 60/70-hour violations and the period required to come into compliance exceeds 34 hours.

SA Part 395 -Seasonal Operations

b2, b7e



b2, b7e



b2, b7e



b2, b7e



b2, b7e




1.5.8.2 SA Part 395 - CAPRI Procedures

Once you have completed your audit of compliance with Part 395, you should use the following guidelines to assist in completing Part B - Questions List Tab or Answer Questions Tab of the CAPRI software.

How do I answer Part 395 Safety Audit Questions?


SA Part 395 Safety Audit Questions

<p>Operations - Question #1 (CRITICAL) 395.8(a) Does the carrier require drivers to make a record of duty status?</p>			
Yes	No	Not Applicable	Documents
The carrier requires drivers to make records of duty status.	If the carrier is unable to produce all of the requested records of duty status.	If the carrier has a system for recording hours of duty status on 100 air-mile radius drivers, and is properly utilizing the 100 air-mile radius exemption.	Requested Records of Duty Status.
<p>Required Comments: Include driver(s) name, and interstate trip date.</p>			
<p> NOTE: Only applicable if Mexico-domiciled carrier operates in commerce with intent to enter the United States, including all operations within the United States.</p>			

Operations - Question #2 (CRITICAL)
395.8(i) Does the carrier require drivers to submit records of duty status within 13 days?

Yes	No	Not Applicable	Documents
The carrier requires drivers to submit records of duty status within 13 days.	If the carrier is unable to produce all of the requested records of duty status.	If Question #1 above was answered "no" OR if the carrier has a system for recording hours of duty status on 100 air-mile radius drivers, and is properly utilizing the 100 air-mile radius exemption.	Requested Records of Duty Status.


Required Comments: Include driver(s) name, and interstate trip date.

 **NOTE:** Only applicable if Mexico-domiciled carrier operates in commerce with intent to enter the United States, including all operations within the United States.


Operations - Question #3 (CRITICAL)
395.8(k)(1) Can the carrier produce records of duty status and supporting documents for selected drivers?


Yes	No	Not Applicable	Documents
The carrier can produce records of duty status and supporting documents for drivers selected. Note: They should maintain both .	If the carrier is unable to produce all of the requested records of duty status, or supporting documents.	If Question #1 above was answered "no" OR if the carrier has a system for recording hours of duty status on 100 air-mile radius drivers, and is properly utilizing the 100 air-mile radius exemption.	Requested Records of Duty Status and Supporting Documents.

Required Comments: Include driver(s) name, interstate trip date, and indicate missing ROD and/or supporting document.


 **NOTE:** Only applicable if Mexico-domiciled carrier operates in commerce with intent to enter the United States, including all operations within the United States.


Operations - Question #4 (CRITICAL)
395.3(a)(1) Has the carrier allowed driver(s) to exceed the 11-hour rule? (Property)


Yes	No	Not Applicable	Documents
The records of duty status indicate any violations of the 11-hour rule.	If a carrier has not allowed the driver(s) to exceed the 11-hour rule.	If the carrier has a system for recording hours of duty status on 100 air-mile radius drivers, and is properly utilizing the 100 air-mile radius exemption.	Requested Records of Duty Status.
<p>Required Comments: Include driver(s) name, interstate trip date in violation, and indicate the total number of hours driving since last 10 consecutive hours off duty.</p>			
<p> NOTE: Only applicable if Mexico-domiciled carrier operates in commerce with intent to enter the United States, including all operations within the United States.</p>			


<p>Operations - Question #5 (CRITICAL) 395.3(a)(2) Has the carrier allowed driver(s) to exceed the 14-hour rule? (Property)</p>			
Yes	No	Not Applicable	Documents
The driver(s) records of duty status indicate any violations of the 14-hour rule.	If a carrier has not allowed the driver(s) to exceed the 14-hour rule.	If the carrier has a system for recording hours of duty status on 100 air-mile radius drivers, and is properly utilizing the 100 air-mile radius exemption.	Requested Records of Duty Status.
<p>Required Comments: Include driver(s) name, interstate trip date in violation, and indicate the number of hours driving after 14 hours on-duty.</p>			
<p> NOTE: Only applicable if Mexico-domiciled carrier operates in commerce with intent to enter the United States, including all operations within the United States.</p>			



<p>Operations - Question #6 (CRITICAL) 395.3(b)(1) Has the carrier allowed driver(s) to drive after having been on-duty more than 60 hours in 7 consecutive days? (Property)</p>			
Yes	No	Not Applicable	Documents
The driver(s) records of duty status	If a carrier has not allowed the driver(s)		Requested Records of Duty Status or


indicate any violations of the 60-hour rule.	to exceed the 60-hour rule.		Time Records for 100-mile radius drivers.
<p>Required Comments: Include driver(s) name, interstate trip date in violation, and indicate the number of hours driving after 60 hours on-duty.</p> <p> NOTE: Only applicable if Mexico-domiciled carrier operates in commerce with intent to enter the United States, including all operations within the United States.</p>			

<p>Operations - Question #7 (CRITICAL) 395.3(b)(2) Has the carrier allowed driver(s) to drive after having been on-duty more than 70-hours in eight consecutive days? (Property)</p>			
Yes	No	Not Applicable	Documents
The driver(s) records of duty status indicate any violations of the 70-hour rule.	If a carrier has not allowed the driver(s) to exceed the 70-hour rule.	If the carrier does not operate everyday of the week.	Requested Records of Duty Status or Time Records for 100-mile radius drivers.
<p>Required Comments: Include driver(s) name, interstate trip date in violation, and indicate the total number of hours driving after 70 hours on duty.</p> <p> NOTE: Only applicable if Mexico-domiciled carrier operates in commerce with intent to enter the United States, including all operations within the United States.</p>			

<p> Operations - Question #8 (CRITICAL) 395.5(a)(1) Has the carrier allowed driver(s) to exceed the 10-hour rule? (Passenger)</p>			
Yes	No	Not Applicable	Documents
The driver(s) records of duty status indicate any violations of the 10-hour rule.	If a carrier has not allowed the driver(s) to exceed the 10-hour rule.	If the entity operates as a property carrier; or if the carrier has a system for recording hours of duty status on 100 air-mile radius drivers, and is properly utilizing the 100 air-mile radius	Requested Records of Duty Status.

		exemption.	
<p>Required Comments: Include driver(s) name, interstate trip date in violation, and indicate the total number of hours driving since last 8 consecutive hours off duty.</p> <p> NOTE: Only applicable if Mexico-domiciled carrier operates in commerce with intent to enter the United States, including all operations within the United States.</p>			

 <p>Operations - Question #9 (CRITICAL) 395.5(a)(2) Has the carrier allowed driver(s) to exceed the 15-hour rule? (Passenger)</p>			
Yes	No	Not Applicable	Documents
The driver(s) records of duty status indicate any violations of the 15-hour rule.	If a carrier has not allowed the driver(s) to exceed the 15-hour rule.	If the entity operates as a property carrier; or if the carrier has a system for recording hours of duty status on 100 air-mile radius drivers, and is properly utilizing the 100 air-mile radius exemption.	Requested Records of Duty Status.
<p>Required Comments: Include driver(s) name, interstate trip date in violation, and indicate the number of hours driving after 15 hours on-duty.</p> <p> NOTE: Only applicable if Mexico-domiciled carrier operates in commerce with intent to enter the United States, including all operations within the United States.</p>			

 <p>Operations - Question #10 (CRITICAL) 395.5(b)(1) Has the carrier allowed driver(s) to drive after having been on-duty more than 60-hours in seven consecutive days? (Passenger)</p>			
Yes	No	Not Applicable	Documents
The records of duty status indicate any violations of the 60-hour rule.	The records of duty status indicate no violations of the 60-hour rule.		Requested Records of Duty Status.
<p>Required Comments: Include driver(s) name, interstate trip date in violation, and indicate the number of hours driving after 60-hours on duty.</p>			



NOTE: Only applicable if Mexico-domiciled carrier operates in commerce with intent to enter the United States, including all operations within the United States.



Operations - Question #11 (CRITICAL)

395.5(b)(2) Has the carrier allowed driver(s) to drive after having been on-duty more than 70-hours in eight consecutive days? (Passenger)

Yes	No	Not Applicable	Documents
The records of duty status indicate any violations of the 70-hour rule.	The records of duty status indicate no violations of the 70-hour rule.	If the carrier does not operate seven days per week.	Requested Records of Duty Status.

Required Comments: Include driver(s) name, interstate trip date in violation, and indicate the number of hours driving after 70 hours on-duty.



NOTE: Only applicable if Mexico-domiciled carrier operates in commerce with intent to enter the United States, including all operations within the United States.

Operations - Question #12 (CRITICAL)

395.8(e) Does available evidence indicate a selected driver has prepared a false record of duty status?

Yes	No	Not Applicable	Documents
If supporting documents indicate any false records of duty status.	If there is no evidence to indicate a selected driver prepared false record of duty status.	If the carrier has a system for recording hours of duty status on 100 air-mile radius drivers, and is properly utilizing the 100 air-mile radius exemption.	Requested Records of Duty Status and Supporting Documents

Required Comments: Include driver(s) name, interstate trip date in violation, and indicate how the record of duty status is false.




NOTE: Only applicable if Mexico-domiciled carrier operates in commerce with intent to enter the United States, including all operations within the United States.

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Operations - Question #13

Does the carrier adhere to a disciplinary policy for noncompliance with Part 395?

Yes	No	Not Applicable	Documents
If the carrier provides evidence of adhering to a policy for hours-of-service violations.	If the carrier does not provide evidence of adhering to a policy for hours-of-service violations.		Disciplinary policies

 **NOTE:** Only applicable if Mexico-domiciled carrier operates in commerce with intent to enter the United States, including all operations within the United States.

Operations - Question #14

395.1(e) Does carrier have a system for recording hours-of-duty status on 100-mile radius drivers, and are they properly utilizing the 100 air-mile radius exemption?

Yes	No	Not Applicable	Documents
If the carrier has a system for recording hours of duty status on 100 air-mile radius drivers, and is properly utilizing the 100 air-mile radius exemption.	If there is evidence to indicate any instances in which the motor carrier is not properly utilizing the 100 air-mile radius exemption. Note: If the carrier did not meet the 100 air-mile radius exemption its drivers must have prepared and submitted RODS. You should go back and answer 395.8 (a)-Question 1.	Carriers drivers prepare and submit RODS.	Time Records for 100-mile radius drivers.

Required Comments: Include driver(s) name, interstate trip date in violation, and indicate how the driver did not meet the requirements of the 100 air-mile radius exemption.



NOTE: Only applicable if Mexico-domiciled carrier operates in commerce with intent to enter the United States, including all operations within the United States.

1.5.9 Safety Audit Part 392 - Driving of Motor Vehicles

[Safety Audit Procedures](#)

[CAPRI Procedures](#)

1.5.9.1 SA Part 392 - Safety Audit Procedures

During your review of compliance with Part 392, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable hazardous materials) and passengers.

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1.5.9.2 SA Part 392 - CAPRI Procedures

Once you have completed your audit of compliance with Part 392, you should use the following guidelines to assist in completing Part B - Questions List Tab or Answer Questions Tab of the CAPRI software.

How do I answer Part 392 Safety Audit Questions?

SA Part 392 Safety Audit Questions

Operations - Question #15 (CRITICAL)

392.2 – Does motor carrier ensure that drivers operate commercial motor vehicles in accordance with the laws, ordinances, and regulations of the jurisdictions in which they are operating?

Yes	No	Not Applicable	Documents
If there is no evidence to indicate the carrier uses drivers who are non-compliant with laws, ordinances, and regulations.	If the evidence shows that the carrier has drivers operating in violation.		Accident Reports, Police Reports, Citations.

Required Comments: Include driver(s) name, interstate trip date in violation, and indicate how the drivers have operated motor vehicles not in accordance with the laws, ordinances and regulations.

Operations - Question #16 (CRITICAL)

392.9(a)(1) – Does motor carrier ensure that drivers are not permitted to drive a vehicle without the cargo properly distributed and adequately secured?

Yes	No	Not Applicable	Documents
If evidence shows carrier instructs its drivers on the proper way to distribute and secure cargo.	If evidence shows that the carrier does not instruct its drivers on the proper load distribution and securement.		Bills of Lading, Accident Reports, Police Reports, Citations.

Required Comments: Include driver(s) name, interstate trip date in violation, and indicate whether the drivers have operated a motor vehicle with the cargo not properly distributed and adequately secured.

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Operations - Question #17 (ACUTE)			
392.4(b) – Have any drivers operated a commercial motor vehicle while under the influence of, or in possession of, narcotic drugs, amphetamines, or any other substances capable of rendering the drivers incapable of safely operating motor vehicles?			
Yes	No	Not Applicable	Documents
If evidence shows that the carrier has drivers who have operated a CMV while using or possessing narcotics. Note: If you answer, “Yes” to this Question, you should stop the SA and a CR should be conducted. (Note : Do not use this cite for a positive driver).	If there is no evidence the carrier permitted driver(s) to operate while under the influence or in possession of illegal drugs (narcotics, amphetamines, etc).		Accident Reports, Police Reports, Citations.
Required Actions: If Yes, and if you are a Certified to conduct compliance review, terminate the Safety Audit and initiate a compliance review. If you are certified to conduct audits only document the violation and provide to the appropriate Division Administrator/ State Director.			

Operations - Question #18 (ACUTE)			
392.5(b)(1) – Have any drivers operated a commercial motor vehicle while under the influence of, or in possession of, intoxicating beverages?			
Yes	No	Not Applicable	Documents
If evidence shows that the carrier has drivers who have operated a CMV while using or possessing intoxicating beverages. Note: If you answer, “Yes” to this question, you should stop the SA and a CR should be conducted. (Note: Do not answer “Yes” to this question for a positive BAT)	If there is no evidence the carrier permitted driver(s) operated a CMV while under the influence or in possession of intoxicating beverages		Accident Reports, Police Reports, Citations.

Required Actions: If Yes, and if you are a Certified to conduct compliance review, terminate the Safety Audit and initiate a compliance review. If you are certified to conduct audits only document the violation and provide to the appropriate Division Administrator/ State Director.

Operations - Question #19 (ACUTE)
392.5(b)(2) – Have any drivers operated a commercial motor vehicle within 4 hours of having consumed intoxicating beverages?

Yes	No	Not Applicable	Documents
If evidence shows that the carrier used a driver within 4 hours of consuming an intoxicating beverage.	If there is no evidence the carrier permitted driver(s) to operate a motor vehicle within 4 hours of having consumed intoxicating beverage.		Accident Reports, Police Report, Citations.

Required Comments: Include driver(s) name, interstate trip date in violation, and indicate type of violation.

1.5.10 Safety Audit Part 393 & 396 - Parts & Accessories, and Inspection, Repair & Maintenance

[Safety Audit Procedures](#)

[CAPRI Procedures](#)

1.5.10.1 SA Part 393 & 396 - Safety Audit Procedures

During your review of compliance with Parts 393 and 396, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable hazardous materials) and passengers.

[Vehicle Inspections](#)

[Calculating the Out-of-Service Rate](#)

[Vehicle Maintenance](#)

[Driver Vehicle Inspection Reports](#)

SA Part 393 & 396 -Vehicle Inspections

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■ SA Part 393 & 396 -Calculating the Out-of-Service Rate

How is the out-of-service rate calculated?

The carriers OOS rate is determined by the number of vehicles placed OOS in relation to the number of vehicles inspected. The calculation of the OOS rate should be based on using the carriers most recent Level 1, 2, or 5 interstate inspections on the company profile, conducted within the previous 12 months, (or since the carrier has received its US DOT number, whichever is less). You should enter the data to calculate the motor carriers out-of-service rate. Data needed are the number of vehicles placed out of service, and the number of vehicles inspected.

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What should I do if I discover roadside inspections during the SA on the company profile that do not belong to the motor carrier?

You must not include these inspections in the out-of-service rate calculation. Provide the Company Profiles state points-of-contact list to the carrier and have them contact the state in question directly.

Advise the motor carrier of the error(s) and explain that they must contact DataQ's to resolve the issue. The DataQ's Web site is found at <http://dataqs.fmcsa.dot.gov>.

■ SA Part 393 & 396 -Vehicle Maintenance

How far back should I go into a carriers vehicle history in order to review compliance with 396 during a SA?

Cover the 12-month period prior to the SA or the time period since the motor carrier received their US DOT number, whichever is less.

How do I prove the carrier has a periodic inspection program in place?

Each vehicle that operates in interstate commerce must have a periodic inspection that has been conducted every 12 months, as part of its maintenance file. The following would serve as proof of a periodic inspection:

- A copy of the inspection and results conducted under Appendix G to 396.
- Evidence of an inspection conducted within the last 12 months, through a state inspection program that has been deemed to satisfy the federal requirements
- Evidence of a CVSA inspection conducted within the last 12 months, which indicates that the vehicle passed a Level 1 inspection with no violations of the critical vehicle inspection items.

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■ SA Part 393 & 396 -Driver Vehicle Inspection Reports

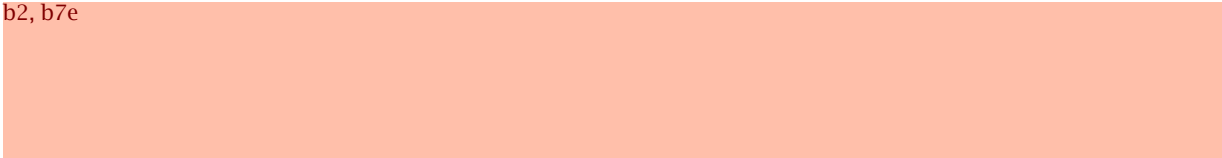
How do I determine the number of driver vehicle inspection reports (DVIR) to be reviewed during a safety audit (SA)?

The review of DVIR should cover the previous 3 months. One month of DVIR for each vehicle selected should be reviewed, regardless of the number of RODS that are reviewed for compliance with Part 395 within the past 6 months.

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Are motor carriers who operate more than one commercial vehicle, required to have their drivers complete a DVIR, in writing, at the completion of each days driving activity?

Every motor carrier must require its drivers to report, and every driver shall prepare a report in writing, at the completion of each days work on each vehicle operated in accordance with 396.11(a).

Are DVIRs required for a motor carrier who operates two registered commercial motor vehicles, yet only has one driver?

The exception in 396.11(d) only applies to motor carriers who operate one registered commercial motor vehicle regardless of the number of drivers employed.

1.5.10.2 SA Part 393 & 396 - CAPRI Procedures

Once you have completed your audit of compliance with Part 396, you should use the following guidelines to assist in completing Part B - Questions List Tab or Answer Questions Tab of the CAPRI software.

How do I answer Part 396 Safety Audit Questions?

SA Part 396 Safety Audit Questions

Maintenance - Question #1 (CRITICAL)			
396.3(b) Can the carrier produce maintenance files for the requested vehicle(s)?			
Yes	No	Not Applicable	Documents
If the carrier can produce the maintenance files requested.	If the carrier cannot produce all of the requested files, or if the requested files are incomplete.		Requested Vehicle Maintenance Files.

Required Comments: Include driver(s) name, interstate trip date in violation, vehicle identification.			
Maintenance - Question #2 (CRITICAL)			
396.17(a) Can the motor carrier produce evidence of periodic (annual) inspections for selected vehicle(s)?			
Yes	No	Not Applicable	Documents
If the carrier can produce evidence of periodic/annual inspections for selected vehicles.	If the carrier cannot produce evidence of a periodic/annual inspection meeting the requirements of 396.17 for all requested vehicles.		Requested Periodic Inspection Reports, Vehicle Maintenance Files.
Required Comments: Include driver(s) name, interstate trip date in violation, vehicle identification.			
Maintenance - Question #3 (CRITICAL)			
396.11(a) Does the motor carrier require driver(s) to complete driver vehicle inspection reports?			
Yes	No	Not Applicable	Documents
If motor carrier requires drivers to complete driver vehicle inspection reports (DVIR) daily, and all requested DVIRs are available for	If all of the requested DVIRs cannot be produced by the motor carrier.	If the motor carrier meets one of the exceptions in 396.11(d)	Requested Driver Vehicle Inspection Reports.

review.			
<p>Required Comments: Include driver(s) name, interstate trip date in violation, vehicle identification and date DVIR was not submitted.</p>			
<p>Maintenance - Question #4 (ACUTE)</p> <p>396.11(c) Does the carrier ensure that out-of-service defects listed by the driver in the driver vehicle inspection report are corrected before the vehicle is re-dispatched?</p>			
Yes	No	Not Applicable	Documents
If carrier ensures that defects listed by the driver on the DVIR have been repaired before the vehicle has been re-dispatched.	If available evidence indicates a vehicle has been re-dispatched before repairs have been made, after a defect has been identified on a DVIR.	If no DVIRs indicate vehicles have had a defect identified, or If the motor carrier meets one of the exceptions in 396.11(d)	Requested Driver Vehicle Inspection Reports.
<p>Required Comments: Include driver(s) name, interstate trip date in violation, vehicle identification and date OOS defect was identified on DVIR.</p>			
<p>Maintenance - Question #5 (ACUTE)</p> <p>396.9(c)(2) Does the carrier ensure vehicles that have been declared out-of-service do not operate before repairs have been made?</p>			
Yes	No	Not Applicable	Documents
If carrier ensures vehicle that have been declared	If available evidence indicates the motor carrier has knowingly used a vehicle that has been placed OOS	If the carrier has had no vehicles placed OOS in the last 12 months (or since the carrier received their	Requested Vehicle Maintenance File, Driver Vehicle Inspection Report, Roadside Inspection Report,

OOS are not operated before repairs are made.	before repairs have been made.	US DOT number)	Drivers Log, Accident Report, Company profile.
Required Comments: Include driver(s) name, interstate trip date in violation, vehicle identification, identify OOS defect, and date vehicle was initially placed OOS.			
Maintenance - Question #6			
396.19 Is carrier using qualified inspectors (mechanics) and maintaining evidence of the inspectors qualifications?			
Yes	No	Not Applicable	Documents
If the carrier uses qualified inspectors, and maintains evidence of the inspectors qualification s.	If available evidence indicates the motor carrier is using an inspector who does not meet the qualification requirements outlined in 396.19, or the carrier does not maintain inspector qualifications.	If the motor carrier uses an outside independent vendor to complete the periodic/annual inspections, or state certified periodic inspection program.	Requested evidence of inspector qualifications.
Required Comments: Include inspectors (mechanic) name, interstate trip date in violation, and vehicle identification.			
Maintenance - Question #7			
396.3 Can the carrier explain its systematic, periodic maintenance program?			
Yes	No	Not Applicable	Documents
If the carrier can explain its systematic maintenance	If the carrier cannot explain its maintenance program.		Requested Vehicle Maintenance File. Preventative Maintenance Schedule.

program.			
Required Comments: Include lack of maintenance schedule.			

1.5.11 Safety Audit Procedures for Hazardous Materials Carriers

[SA HM Registration](#)

[SA HM Incident Reporting](#)

[SA HM Training](#)

[SA HM Shipping Papers and Segregation](#)

[SA HM Cargo Tanks](#)

[SA HM Driving and Parking](#)

1.5.11.1 SA HM Registration

[Safety Audit Procedures](#)

[CAPRI Procedures](#)

SA HM Registration Safety Audit Procedures

What should I do to prepare for a Safety Audit on a hazardous materials carrier?

If applicable, a carrier's registration with the Pipeline and Hazardous Materials Safety Administration (PHMSA) should be checked prior to conducting a SA.

What if I discover during a SA that a motor carrier transports Hazardous Materials?

You should determine whether the motor carrier has registered with the Pipeline and Hazardous Materials Safety Administration (PHMSA) in accordance with § 107.608.

What if a motor carrier cannot produce evidence of registration, but claims to be registered?

Inform the carrier it will be given 10 working days after the closeout of the SA to produce evidence of registration. ^{b2, b7e}

What if the motor carrier/shipper fails to register within the 10 working days?

The information should be forwarded to the Division Office of the FMCSA in the State where that carrier is located for further investigation.

What if the motor carrier fails to provide the necessary documentation of its HM registration?

The information should be forwarded to the Division Office of the FMCSA in the State where that carrier is located for further investigation.

What if the motor carrier is not currently registered with the PHMSA?

Inform a high-level company official that they must register immediately for each registration year in which they engaged in activities covered by the registration program.

What if the motor carrier submits complete and accurate proof of registration within 10 working days after closeout of the SA?

No further action is required.

When must an SCR be conducted?

If in the course of a Safety Audit or Compliance Review, it is determined that the carrier is required to have a security plan in accordance with Subpart I, an SCR must be performed in conjunction with the review or audit.

SA HM Registration CAPRI Procedures

Once you have completed your audit of HM-Registration, you should ask yourself, "Can I prove each discovered violation of HM-Registration?" If you can answer, "Yes" to this question, the following guidelines have been established to assist in completing Part B-Questions List Tab or Answer Questions Tab of CAPRI:

How do I answer HM-Registration Safety Audit Questions?**Hazardous Materials - Question #1**

107.608(b) – Is the carrier registered with the Pipeline and Hazardous Materials Safety Administration (PHMSA) , and do they have copies of its registrations for the previous 3 years?

Yes	No	Not Applicable	Documents
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If the carrier is registered with PHMSA.	If the carrier is not currently registered, or if they are missing any of their registrations from the previous years it was subject.	If the carrier is not required to register.	PHMSA Registration Form(s), Bills of Lading, Shipping Papers.
Required Comments: Driver(s) name, trip date, HM commodity transported requiring registration, and include year(s) motor carrier was subject to registration and did not register.			

1.5.11.2 SA HM Incident Reporting

[Safety Audit Procedures](#)
[CAPRI Procedures](#)

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How do I answer HM-Incident Reporting Safety Audit Questions?

Hazardous Materials - Question #2 (CRITICAL)			
171.15 – Does the carrier promptly report hazardous materials incidents requiring immediate telephone notification to the appropriate authorities?			
Yes	No	Not Applicable	Documents
If the carrier has reported HM incidents as required.	If the carrier has had an HM incident requiring telephone notification, and the carrier failed to do so.	If the carrier has not had any HM incidents requiring telephone notification.	RSPA Registration Form, Bills of Lading, Shipping Papers, Accident Reports, OSHA Claims, Over Short & Damage Reports, and HM Incident Reports.
Required Comments: Driver(s) name, trip date, HM commodity transported, date of HM incident, HM product spilled, and name of motor carrier official(s) who failed to report HM incident.			

Hazardous Materials - Question #3 (CRITICAL)			
171.16 – Does the carrier file hazardous materials incidents reports when required?			
Yes	No	Not Applicable	Documents
If the carrier has filed required HM incidents reports.	If the carrier has had an HM incident requiring the completion of an HM incident report, and the carrier failed to do so.	If the carrier has not had any HM incidents requiring HM report to be filed.	RSPA Registration Form, Bills of Lading, Shipping Papers, Accident Reports, OSHA Claims, Over Short & Damage Reports, and HM Incident Reports.
Required Comments: Driver(s) name, trip date, HM commodity transported, date of HM incident, HM product spilled, and name of motor carrier official(s) who failed to file report			

of HM incident.

1.5.11.3 SA HM Training

[Safety Audit Procedures](#)
[CAPRI Procedures](#)

SA HM Training Safety Audit Procedures

How do I verify if HM training has been provided to the motor carrier's HM drivers?

Verify HM training has been provided and documented for drivers whose DQ files are checked.

What if the DQ files I have checked are for drivers, who do not transport HM?

Check HM training and related HM training documentation for drivers who transported HM shipments, for HM shipping papers reviewed.

What if I discover HM drivers who have not received the required HM Training?

Make note of all HM drivers who are not familiar with the Hazardous Materials Regulations (HMRs) applicable to their responsibilities and record this in Part C of the SA. You must answer “no” to Hazardous Materials-Question #4.

How do I verify the HM Training Materials meet the requirements of 172.704(a)(1-5)?

Review the actual HM training materials to verify whether the motor carriers HM training materials cover all subject areas.

SA HM Training CAPRI Procedures

Once you have completed your audit of HM-Training, you should ask yourself, “Can I prove each discovered violation of HM-Training?” If you can answer, “Yes” to this question, the following guidelines have been established to assist in completing Part B-Questions List Tab or Answer Questions Tab of CAPRI:

How do I answer HM-Training Safety Audit Questions?

Hazardous Materials - Question #4 (CRITICAL)
177.800(c) – Does carrier provide HM training for its drivers?

Yes	No	Not Applicable	Documents
If the HM training is provided.	If the carrier did not provide HM training for its drivers as required by Part 172 (Subpart H-Training)	If the carrier meets Materials of Trade exception, HM training is not required.	Training Materials, Bills of Lading, Shipping Papers.
Required Comments: Driver(s) name, trip date, HM commodity transported, and name of motor carrier official(s) responsible to ensure HM training is provided.			

Hazardous Materials - Question #5 172.704(a) – Does the HM training materials cover the required minimum elements?			
Yes	No	Not Applicable	Documents
If the HM training materials cover the required elements outlined in 172.704(d) (1-5).	If the HM training materials do not cover the required elements.	If the carrier meets Materials of Trade exception, HM training is not required, or if the carrier did not provide HM training for its drivers.	Training Materials, Bills of Lading, Shipping Papers.
Required Comments: Driver(s) name, trip date, HM commodity transported, and name of motor carrier official(s) responsible to ensure HM training is provided.			

1.5.11.4 SA HM Shipping Papers and Segregation Safety Audit Procedures

[Safety Audit Procedures](#)
[CAPRI Procedures](#)

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Where must the HM shipping paper be maintained?

Motor carriers must maintain shipping papers in an easily accessible location, on their vehicles during HM transportation, and retain the original shipping document (and certification) in their files.

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What if I discover substantial violations with one or more of the carriers' shippers?

The information should be forwarded to the FMCSA Division Office where the carrier is located and the Division Office should forward the information to the FMCSA Division in the State where that shipper is located for further investigation.

What if hazardous waste is being offered for transportation and/or being transported?

Review the company's compliance with the hazardous waste manifest requirements in 172.205.

SA HM Shipping Papers and Segregation CAPRI Procedures

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How do I answer HM-Shipping Papers and Segregation Safety Audit Questions?

Hazardous Materials - Question #6 (CRITICAL)

177.817(a) – Are the shipping papers used by the carrier properly prepared?

Yes	No	Not Applicable	Documents
If the HM shipping papers are properly prepared.	If the HM shipping papers do not meet the requirements of 172.200.	If the carrier meets Materials of Trade exception, HM shipping papers are not required.	Bills of Lading, Shipping Papers, Materials Safety Data Sheet.
Required Comments: Driver(s) name, trip date, HM commodity transported, and missing required HM shipping paper information.			

Hazardous Materials - Question #7 (CRITICAL)

177.817(e) – Does the carrier ensure the driver maintains proper accessibility of shipping papers during transportation of HM?

Yes	No	Not Applicable	Documents
If evidence shows HM shipping papers are properly accessible.	If the HM shipping papers do not meet the requirements of 172.200.	If the carrier meets Materials of Trade exception, HM shipping papers are not required.	Bills of Lading, Shipping Papers, Materials Safety Data Sheet, Accident Reports, Roadside Inspection Reports.
Required Comments: Driver(s) name, trip date when HM shipping papers were not accessible, and HM commodity transported.			

Hazardous Materials - Question #8 (ACUTE)

177.841(e) – Does the carrier transport packages bearing a poison label in the same vehicle with any foodstuffs, food for humans or feed for animals?

Yes	No	Not Applicable	Documents
If evidence shows the carrier has transported a package bearing a poison label, in the same vehicle with any foodstuff, human food, or animal feed. Note: If you answer, “Yes” to this question, you	If the evidence shows proper segregation.	If the carrier does not transport any commodity requiring a poison label.	Bills of Lading, Shipping Papers, Materials Safety Data Sheet, Accident Reports, Roadside Inspection Reports.

should stop the SA and a CR should be conducted.			
<p>Required Actions: If Yes, and if you are a Certified to conduct compliance review, terminate the Safety Audit and initiate a compliance review. If you are certified to conduct audits only document the violation and provide to the appropriate Division Administrator/ State Director.</p>			

<p>Hazardous Materials - Question #9 177.848 – Is the motor carrier aware that some hazardous materials may not be transported in the same vehicle, with other hazardous materials?</p>			
Yes	No	Not Applicable	Documents
If the motor carrier is familiar with the HM segregation and separation regulations.	If the carrier is not aware of these requirements.		Bills of Lading, Shipping Papers, Materials Safety Data Sheet, Accident Reports, Roadside Inspection Reports.
<p>Required Comments: Driver(s) name, name of motor carrier official that was not knowledgeable of requirements of 177.848, and HM commodity transported.</p>			

1.5.11.5 SA HM Cargo Tanks

[Safety Audit Procedures](#)
[CAPRI Procedures](#)

SA HM Cargo Tanks Safety Audit Procedures

What if the motor carrier uses cargo tanks in its operation?

Examine the manufacturer’s certificates, ASME data sheets (if applicable), and inspection/ test reports for one cargo tank of each specification that the carrier operates.

What if the motor carrier operates multiple types of cargo tanks in its operation?

The auditor must review all of the documents from one of each type of cargo tank.

How do I determine whether all required inspections and tests have been conducted?

Review the inspection/test reports for completeness and to determine whether the tests were conducted in the required manner.

How do I determine whether each type of specification cargo tanks has the required inspection and test markings?

If possible, visually inspect the cargo tanks for the required test/inspection markings and specification violations.

What if I discover an accident record that reveals damage to the integrity of a cargo tank?

The damaged specification cargo tank may require retesting.

What if I discover during my review of a cargo tank maintenance record, that the cargo tank was repaired?

Determine whether the proper retesting was conducted and the related documentation is maintained.

What if the motor carrier conducts inspections, tests, repairs, or modifications of cargo tanks?

Determine whether it has registered with the U.S. Department of Transportation as required by Part 107 Subpart F.

What if the HM carrier uses the services of an independent cargo tank facility, and violations are discovered?

The auditor should forward all the information to the Division Office of the FMCSA in the State where that cargo tank facility is located for further investigation.

SA HM Cargo Tanks CAPRI Procedures

Once you have completed your audit of HM-Cargo Tank, you should ask yourself, “Can I prove each discovered violation of HM-Cargo Tank?” If you can answer, “Yes” to this question, the following guidelines have been established to assist in completing Part B-Questions List Tab or Answer Questions Tab of CAPRI:

How do I answer HM-Cargo Tank Safety Audit Questions?

Hazardous Materials - Question #10 (CRITICAL)
180.407(a) – Has the carrier transported a shipment of HM in a cargo tank that has not been inspected or tested in accordance with 180.407?

Yes	No	Not Applicable	Documents
If evidence shows the carrier transported HM in a cargo tank that was not tested or inspected in accordance with 180.407.	If evidence shows compliance with inspection and testing requirements.	If the carrier does not use cargo tanks.	Cargo Tank Test and Inspection Report, Manufacture's Certificate, Bills of Lading, Shipping Papers, Materials Safety Data Sheet, Company profile, Accident Report, Roadside Inspection Report.
Required Comments: Driver(s) name, trip date, vehicle identification (type of specification cargo tank), HM commodity transported, missing required test(s) or inspection(s).			

Hazardous Materials - Question #11 (CRITICAL)
180.407(c) – Are all of the cargo tanks used for the transportation of HM periodically tested and inspected in accordance with 180.407?

Yes	No	Not Applicable	Documents
If evidence shows the compliance with 180.407.	If evidence shows the carrier did not test and inspect its cargo tanks in accordance with 180.407.	If the carrier does not use cargo tanks.	Cargo Tank Test and Inspection Report, Manufacture's Certificate, Bills of Lading, Shipping Papers, Materials Safety Data Sheet, Company profile, Accident Report, Roadside Inspection Report.
Required Comments: Driver(s) name, trip date, vehicle identification (type of specification cargo tank), HM commodity transported, missing required test(s) or inspection(s).			

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Hazardous Materials - Question #12 (CRITICAL)			
180.415 – Are HM cargo tanks that have passed required inspections and testing marked in accordance with 180.407?			
Yes	No	Not Applicable	Documents
If evidence shows proper test and inspection markings on specification cargo tank in accordance with 180.407.	If evidence shows that specification cargo tanks are not marked with they passed required tests or inspections.	If the carrier does not use cargo tanks.	Cargo Tank Test and Inspection Report, Manufacture's Certificate, Bills of Lading, Shipping Papers, Materials Safety Data Sheet, Company profile, Accident Report, Roadside Inspection Report.
Required Comments: Driver(s) name, trip date, vehicle identification (type of specification cargo tank), HM commodity transported, missing required test(s) or inspection(s) markings.			

Hazardous Materials - Question #13 (CRITICAL)			
180.417(a)(1) – Has the carrier retained all of the manufactures data report certificates and related papers as required?			
Yes	No	Not Applicable	Documents
If all documents required by 180.417 are produced.	If the carrier cannot produce the reports for the specification cargo tanks checked.	If the carrier does not operate cargo tanks.	Manufactures Data Report Certificates, Inspection Forms, Cargo Tank Test and Inspection Reports, Bills of Lading, Shipping Papers, Materials Safety Data Sheet.
Required Comments: Driver(s) name, trip date, vehicle identification (type of specification cargo tank), HM commodity transported, specify missing required manufactures data report certificates and/or related papers.			

1.5.11.6 SA HM Driving and Parking

[Safety Audit Procedures](#)
[CAPRI Procedures](#)

SA HM Driving and Parking Safety Audit Procedures

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How do I verify the motor carrier has provided all HM drivers who transport Div. 1.1, 1.2, 1.3 explosive materials, a copy of Part 397, and required emergency response instructions?

Review driver qualification files or other motor carrier records where required information may be maintained.

How do I review the written route plans for Division 1.1, 1.2, and 1.3 (explosive) material and highway route controlled quantities of Class 7 (radioactive) material?

Ask the motor carrier for a copy of the written route plans to ensure all required information is maintained.

SA HM Driving and Parking CAPRI Procedures

Once you have completed your audit of HM-Driving and Parking, you should ask yourself, “Can I prove each discovered violation of HM-Driving and Parking?” If you can answer, “Yes” to this question, the following guidelines have been established to assist in completing Part B-Questions List Tab or Answer Questions Tab of CAPRI:

How do I answer HM-Driving and Parking Safety Audit Questions?

Hazardous Materials - Question #14 (ACUTE)			
397.5(a) – Does the carrier ensure that drivers operating vehicles containing Division 1.1, 1.2, or 1.3 (Explosive) materials are attended at all times?			
Yes	No	Not Applicable	Documents
If evidence shows proper attendance.	If evidence shows a driver has left a vehicle unattended containing Div. 1.1,	If the carrier does not transport explosives.	Bills of Lading, Shipping Papers, Material Safety Data Sheets, Company

	1.2, 1.3 materials.		Profile, Drivers Logs, Roadside Inspections, Accident Report, HM Incident Report.
Required Comments: Driver(s) name, trip date, vehicle identification, HM commodity transported, where the unattended vehicle was discovered in violation.			

Hazardous Materials - Question #15 (CRITICAL)			
397.7(a)(1) – Has the carrier’s driver parked a vehicle containing Division 1.1, 1.2, or 1.3 (Explosive) materials within 5 feet of the traveled portion of a highway or street?			
Yes	No	Not Applicable	Documents
If evidence shows the carrier’s driver has parked a vehicle containing Div. 1.1, 1.2, 1.3 materials within 5 feet of a highway or street.	If evidence shows compliance with Part 397.7(a)(1).	If the carrier does not transport explosives.	Bills of Lading, Shipping Papers, Material Safety Data Sheets, Company Profile, Drivers Logs, Roadside Inspections, Accident Report, HM Incident Report.
Required Comments: Driver(s) name, trip date, vehicle identification, HM commodity transported, identify where the vehicle was discovered parked in violation.			

Hazardous Materials - Question #16 (CRITICAL)			
397.7(b) – Has the carrier’s driver parked a vehicle containing materials other than Division 1.1, 1.2, or 1.3 (Explosive) within 5 feet of the traveled portion of a highway or street?			
Yes	No	Not Applicable	Documents
If evidence shows the carrier’s driver has parked a vehicle containing other than Div. 1.1, 1.2, 1.3 materials within 5 feet of a highway or street.	If evidence shows compliance with Part 397.7(b).	If the carrier does not transport HM requiring the vehicle to be marked or placarded.	Bills of Lading, Shipping Papers, Material Safety Data Sheets, Company Profile, Drivers Logs, Roadside Inspections, Accident Report, HM Incident Report.
Required Comments: Driver(s) name, trip date, vehicle identification, HM commodity transported, identify where the vehicle was discovered parked in violation.			

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Hazardous Materials - Question #17 (CRITICAL)

397.13(a) – Has the carrier or it’s driver permitted anyone to smoke within 25 feet of a vehicle containing the following materials; Class 1, 2 (only Div 2.1) 3, 4 (only Div. 4.1, 4.2) and 5?

Yes	No	Not Applicable	Documents
If evidence shows the carrier or it’s driver has allowed this violation to occur.	If evidence shows this violation did not occur.	If the carrier does not transport any of these materials.	Bills of Lading, Shipping Papers, Material Safety Data Sheets, Company Profile, Drivers Logs, Roadside Inspections, Accident Report, HM Incident Report.

Required Comments: Driver(s) name, trip date, vehicle identification, HM commodity transported, identify the date and individual who violated this regulation.

Hazardous Materials - Question #18 (CRITICAL)

397.19(a) – Has the carrier furnished all drivers transporting Division 1.1, 1.2, or 1.3, (Explosive) material a copy of the rules of Part 397 and/or emergency response instructions?

Yes	No	Not Applicable	Documents
If carrier has provided this material.	If evidence shows the carrier has not provided the materials required by 397.19 (a).	If the carrier does transport 1.1, 1.2, or 1.3 explosives.	Bills of Lading, Shipping Papers, Material Safety Data Sheets, Driver Qualification Files, Company Profile, Drivers Logs, Roadside Inspections, Accident Report, HM Incident Report.

Required Comments: Driver(s) name, trip date, vehicle identification, HM commodity transported, identify motor carrier official who failed to provide materials required by 397.19(a).

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Hazardous Materials - Question #19 (CRITICAL)			
397.67(d)/397.101(d) – Does the carrier have a system to ensure all drivers transporting highway route controlled quantities of Class 7 (Radioactive) material or Div. 1.1, 1.2, or 1.3 (Explosives) material have a written route plan?			
Yes	No	Not Applicable	Documents
If the carrier has a system to provide written route plans.	If the carrier does not provide their drivers a written route plan.	If the carrier does not transport these types of hazardous materials.	Bills of Lading, Shipping Papers, Material Safety Data Sheets, Company Profile, Drivers Logs, Roadside Inspections, Accident Report, HM Incident Report.
Required Comments: Driver(s) name, trip date, vehicle identification, HM commodity transported, identify the date and motor carrier official who violated this regulation.			

1.5.12 SA Conclusion of Investigation and Completion of Part C

[Safety Audit - What happens during the closeout of the audit?](#)

[Safety Audit - What should I do after the closeout of the safety audit is complete?](#)

[Safety Audit - How do I complete Part C after I've closed out the investigation?](#)

[Safety Audit - What issues should I discuss in Part C?](#)

[Safety Audit - What are the requirements for uploading safety audits?](#)

Safety Audit - What happens during the closeout of the audit?

After you have completed your investigation, you will need to conduct a closeout session with the owner, partner, or corporate official. If none of these individuals are available, discuss the audit with the most appropriate person.

During the closeout, you should inform the motor carrier official of the company's proposed results (pass/fail) for the safety audits. Explain that the final decision will be issued from FMCSA Headquarters. You should be prepared to explain how the results were determined in the event the motor carrier asks.

If the motor carrier/shipper committed any violation of an acute regulation, or a frequency of violations of a critical regulation of 10% or more, corrective action should be requested of the carrier/shipper during the closeout interview. Generally, you should request that the carrier submit a letter to you within 15 days outlining corrective action to be taken. Other requests such as asking the motor carrier/shipper to submit specific records and documents may be appropriate.

If the motor carrier has had any accidents in the previous 12 months, make the motor carrier aware of the accident countermeasures and Hazardous Materials Incident Prevention countermeasures information that is available on the agency's Internet Web site. The purpose of these countermeasures is to assist motor carriers in analyzing their accidents and incidents, and developing strategies to eliminate future occurrences.

You should use the closeout as an opportunity to discuss any other compliance and enforcement issues that you feel are necessary with the motor carrier.

■ Safety Audit - What should I do after the closeout of the safety audit is complete?

When the closeout session has concluded, request the highest ranking motor carrier/shipper official in the session to sign and write his/her title on Part A, each page of Part B, and the Review/Audit Receipt Page. If this official is not the sole proprietor, a partner, or a corporate officer, leave a copy of the signed report and advise him/her that another copy will be sent by certified mail to the sole proprietor, a partner, or a corporate officer. Only copies of Parts A, B, and the Review/Audit Receipt Page of the investigation report are given to the motor carrier. The motor carrier does not receive a copy of Part C.

If the motor carrier/shipper official refuses to sign the report, you should advise him/her that the signature only constitutes a receipt for the report. If he/she still refuses, tell him/her that a copy of the safety audit will be mailed to the sole proprietor, a partner, or a corporate officer by certified mail. Upon a refusal to sign, do not leave a copy of the report. When mailing the copy, send it by certified mail with return receipt requested.

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1.5.13 SA Mexican Carrier

[SA Mexican Carrier Registration FAQ](#)

[SA Mexican Carrier Safety FAQ](#)

[SA MX Monitoring SA and PASA](#)

[Mexican Licencia Federal - V2](#)

1.5.13.1 SA Mexican Carrier Registration FAQ

1. Do I need an MX number if I'm just crossing the U.S. border occasionally?

Yes, every Mexican motor carrier that enters the U.S. must have a FMCSA assigned MX number, a valid FMCSA Certificate of Registration or Operating Authority and a USDOT number.

2. Do I need an MX number if I'm just going one or two miles into the U.S.?

Yes, every Mexican motor carrier that enters the U.S. must have a FMCSA assigned MX number, a valid FMCSA Certificate of Registration or Operating Authority and a USDOT number regardless of the distance traveled into the U.S.

3. I don't have my MX number yet, but I'm supposed to make a trip tomorrow. May I

still make the trip?

No, a Mexican motor carrier cannot operate in the U.S. without first obtaining a FMCSA assigned MX number, a valid FMCSA Certificate of Registration or Operating Authority and a USDOT number.

4. How long does it take to get an MX number, Certificate of Registration and USDOT number?

The time it takes to obtain an MX number varies depending on the application submitted and how the application is submitted.

OP-2: if the application is complete it can be processed in 4-8 weeks.

OP-1(MX): If the application is complete, it can be processed in 4-8 weeks. However, once the application is processed, the carrier must submit to and pass a Safety Audit. Once the audit is successfully completed, the carrier will be notified of the results and of the requirement to submit evidence of insurance to FMCSA. At the same time, the carrier's information is published in the FMCSA Register to allow for a 10 day protest period. At the end of that protest period and upon receipt of evidence of insurance and the BOC-3, Designation of Process Agent form, the provisional authority will be issued. At this time, it is unclear how much additional time this will take.

However, if an application is submitted and it is not completed correctly, it will be sent back to the motor carrier for correction. When the corrections are returned, they are entered in the order they are received along with any new applications that are received.

5. I haul for a maquila company. Am I a private carrier?

Generally the answer is no. A maquila is a company that manufactures items. In the maquila industry, raw materials are sent to Mexico, they are made into a final product, and then returned to the U.S. for distribution. The agreement is that nothing made in a maquila has been imported into Mexico, therefore, it can't be sold in Mexico. It must be exported back to the foreign owner.

Follow up questions must be asked of the carrier:

- a. Do you own the merchandise? Normally, the maquila owns only the labor. The merchandise is owned by a U.S. entity.
- b. Is the maquila actually the trucking company or are you contracted by the maquila? This is normally the situation - contract carrier. It does not matter if the same person owns the maquila as owns the trucking company. They are usually separate and distinct entities. Foreigners who are not Mexican citizens usually own the maquilas and non-Mexican citizens cannot own transportation companies in Mexico.

6. I have authority to go beyond the commercial zone now, but I heard I need to reapply, what form do I need and how do I get it?

You will need to submit an OP-1(MX) The deadline to submit an OP-1(MX) to renew a current Operating Authority for operations beyond the commercial zone is November 4, 2003. The FMCSA may suspend or revoke the Operating Authority of any carrier that fails to meet this deadline.

Your current Operating Authority would remain valid until the FMCSA acts on your OP-1(MX) application.

Mexico-domiciled carriers can obtain a copy of the application package: Through the mail by calling FMCSA's Information Line: (001-800-832-5660 from Mexico or 1-800-832-5660 from the U.S. or Canada) or any FMCSA Division office and requesting the OP-1(MX) application package or through the FMCSA, Web site on the Internet at: http://www.fmcsa.dot.gov/español/mmc_spanish.htm or call the Transborder Office at 619-710-8400.

7. I have authority to operate in the commercial zone now, but I heard I need to reapply, what form do I need and how do I get it?

If your company is based in Mexico and you wish to continue operating only in the commercial zones, an application should have been submitted before the deadline, to avoid paying the fee. The deadline to submit an OP-2, to renew a current Certificate of Registration was October 20, 2003. However, if you wish to change from operating in the commercial zones to beyond the commercial zones you should file the OP 1 (MX) and pay the fee.

You should be aware however, that if you decide to file an OP-1(MX), and the land transportation provisions of the North American Free Trade Agreement (NAFTA) are not implemented, you may lose your ability to renew your current Certificate of Registration at no charge.

Mexico-domiciled carriers can obtain a copy of the application package: Through the mail by calling FMCSA's Information Line: (001-800-832-5660 from Mexico or 1-800-832-5660 from the U.S. or Canada) or any FMCSA Division office and requesting the OP-2 application package or through the FMCSA, Web site on the Internet at: http://www.fmcsa.dot.gov/español/english/mmc_english.htm or at the Transborder Office at 619-710-8400.

8. I have two companies. One in the U.S. and one in Mexico. Which application do I need?

Both companies need their own authority. Although both companies may have the same owners and corporate officers, they are considered to be separate companies located in different countries. The Mexico domiciled carrier needs an OP-2 or OP-1(MX) application. The U.S. domiciled carrier or enterprise carrier must fill out the standard OP-1 application. The Motor Carrier must pay the fee indicated on the application.

9. I have been crossing the border for many years and have never needed an MX number, Certificate of Registration or USDOT number before. Is this something new?

No. The MX number, Certificate of Registration and USDOT number has been in place since 1982.

10. I read in the paper that the border was opened. Does this mean I can go anywhere in the U.S. that I want?

Once the land transportation provisions of NAFTA are implemented, you will be able to apply for an OP-1(MX) and receive authority to perform transportation services throughout the United States.

11. What happens if I operate without authority?

A number of things could happen if you operate without authority. Under 49 CFR 392.9a (b) requires that carriers operating without authority or beyond the scope of their authority can be put Out of Service. A company operating without authority is also subject to fines.

12. Is the commercial zone 20 miles?

No, commercial zones are defined in 49 CFR 372, Subpart B. Some zones are identified by name. The population of the municipality determines those that are not identified in 49 CFR 372, Subpart B. The OP-2 application has a list of the border crossings and associated commercial zones.

13. My certificate of registration says I can carry exempt commodities. What are exempt commodities?

In general, exempt commodities are things that have not been processed in any way such as fresh produce. There is a partial list of non-exempt commodities in 49 CFR 372.115. There is an additional list of exempt and non-exempt commodities in Administrative Rule 119, which can be found on our Web site: <http://www.fmcsa.dot.gov/pdfs/adminrule.pdf>

14. May a Mexican carrier lease its equipment to a U.S. company?

A Mexico-domiciled motor carrier may lease its equipment to a U.S. motor carrier only for operations within the commercial zones, provided the carrier complies with the leasing requirements found in 49 CFR Part 376. A copy of the lease must be carried on the vehicle. A Mexico-domiciled motor carrier may not lease its equipment to a U.S. motor carrier for operations beyond the commercial zones. Any Mexico-domiciled motor carrier who enters into such a lease for operations beyond the commercial zones is subject to penalties, including out of service orders.

15. Can a U.S. company lease its equipment to a Mexican company?

Yes, there is no prohibition against a U.S. company leasing their equipment to a Mexican company for operations in the United States. They would need to comply with the leasing regulations in 49 CFR 376, Subpart B. However, if this vehicle is going to be operated in Mexico, both companies need to verify the vehicle leasing regulations in Mexico with the Secretaría de Comunicaciones y Transportes (SCT).

16. Can a Mexican company lease its equipment to another Mexican company?

Yes, one Mexican company can lease its equipment to another Mexican company for operations in the United States. They would need to comply with the leasing regulations in 49 CFR 376, Subpart B.

17. Once I submit my application, can I begin operating in the U.S.?

No, you must wait until you receive the Certificate of Registration for commercial zone operations or an Operating Authority for operations beyond the commercial zone. Until such documentation is issued, you may not operate. All commercial zone carriers must carry a copy of the Certificate of Registration in each and every vehicle when crossing into the U.S.

18. May a Mexican carrier operate in the U.S. with a copy of the completed OP-2 application in the vehicle?

A Mexican carrier may choose to carry a copy of his completed application on board the vehicle, but this does not comply with the regulatory requirement. The requirement is for the carrier to have on board the vehicle, a copy of the Certificate of Registration (commercial zone carriers).

19. Does a copy of the front page of the MX certificate of registration satisfy the regulation 387.303(b)(4) or must a carrier have all of the pages of the certificate on board the vehicle?

No, the front page does not satisfy the requirement of having the Certificate of Registration on board the vehicle. The regulation says that the carrier must have the Certificate of Registration. The newest Certificates of Registration are one page documents.

20. May I go into other states and make deliveries?

If you are still operating on a certificate issued prior to April 18, 2002, then your Certificate of Registration will indicate in which states you may operate. If your certificate was issued after April 18, 2002, then you may operate in those states where you have an agent of process. If you are unsure where you have an agent of process, the information can be found at <http://li-public.fmcsa.dot.gov>.

In no case is a Mexican motor carrier allowed to perform domestic interstate transportation between points in the U.S.

21. I use a pick-up truck (small van, car, tow truck, etc) to bring my merchandise from Mexico to the U.S. Do I need an MX number?

Yes, for Authority issues, the size of the vehicle is irrelevant.

22. I have a company in Mexico and a company in the United States. My trucks have both Mexico and U.S. license plates. Can I put my MX number and my MC number on the same truck?

No. A single company cannot claim multiple places of domicile and therefore would not be entitled to have both numbers. The vehicle must be marked in accordance with 49 CFR 390.21. that requires the placement of a USDOT number. Please see: <http://www.fmcsa.dot.gov/rulesregs/fmcsr/regs/390.21.htm>

23. I have a bus company in Mexico and I want to provide service to all areas in California and to Las Vegas, NV. Do I need an MX Authority and how long will it take to get my Authority?

Yes, you must file an OP-1(MX) for motor passenger carrier authority beyond the commercial zone. How long it will take to get your authority will vary depending upon whether the application is completed correctly or not. An application that is completed correctly can be processed significantly faster.

However, if an application is submitted and it is not completed correctly, it will be sent back to the motor carrier for correction. When the corrections are returned, they are entered in the order they are received along with any new applications that are received.

Additionally, no authority will be issued for operations beyond the zone until the land transportation provisions of NAFTA have been implemented.

24. How do I change the type of authority I have?

You may file for any additional authorities if you want. You must submit a new OP-2 and pay the fee that is indicated on the application.

1.5.13.2 SA Mexican Carrier Safety FAQ

[Memo 8-26-2005 HQ 08-26-05 Self Cert Compliance w Motor Vehicle Safety Standards](#)

1. Must the files that I maintain in order to comply with the FMCSRs be in English?

No, there is no regulatory requirement that files be kept in English. However, any time a specific form is identified by name/number (i.e. MCS-90) the only approved form is in English.

2. A driver with residence in Mexico drives for a U.S. company. Does that driver need a state issued commercial drivers license?

Yes, the driver needs a license from his place of residence. Licensing is not dependent on place of employment.

[Back to Mexican Safety FAQs](#)

3. Must a driver from Mexico have a record of duty status available for inspection when operating in the United States?

A driver from Mexico is subject to the same record of duty status requirements as any other driver operating in the United States. If they are operating within a 100-air mile radius of their home terminal, they may take advantage of the 100-air mile radius exemption in 49 CFR 395.1(e). However, if they are operating beyond a 100-air mile radius or do not meet the requirements of the previously mentioned exemption, then they must have a record of duty status current on the day of inspection.

4. My truck was inspected and there were some violations discovered. How long do I have to fix the violations?

A violation that resulted in the truck being placed out of service must be corrected before the vehicle can operate again. Other violations discovered must be corrected before the next dispatch. The report needs to be sent within 15 days.

5. I do not work for a local company and I have not given them the inspection report yet. Do I still need to make the repairs?

Yes, the repairs need to be made. Further, the regulations say that if the driver is not going to return to the motor carrier's terminal or facility, the driver must mail the inspection report to the carrier. Also, the carrier must certify, on the inspection form, that the repairs have been made and return the form to the FMCSA.

1.5.13.3 SA MX Monitoring SA and PASA

[Introduction/General Policies](#)
[Preparation](#)

GENERAL GUIDELINES FOR SAFETY AUDIT

INTRODUCTION/GENERAL POLICIES

- a. A pre-authorization safety audit (PASA) provides a review of the carrier's written procedures and records to validate the accuracy of information and certifications provided in the application and determine whether the carrier has established and exercises basic safety management controls necessary to ensure safe operations. It should also be used to provide educational and technical assistance to motor carriers in identifying safety deficiencies and to offer corrective solutions to those deficiencies.

- b. A safety audit (SA) is a monitoring instrument designed to provide the FMCSA with a broad overview of the carrier's safety and compliance operation. It may be conducted on-site or at a fixed location designated by the FMCSA. The SA consists of specialized questions that are structured to determine if the motor carrier has established or exercises the basic safety management controls necessary to ensure safe operations. Thus, the answers will serve as indicators as to whether the carrier is effecting compliance.
- c. The SA is conducted on Mexico-domiciled carriers who have authority to operate within the border commercial zones. The PASA is conducted on those applying for authority to operate beyond the border commercial zones ("long haul").
- d. Similar operating procedures will be used for both the PASA conducted on "long haul" carriers and for the SA conducted on carriers who only operate within the border commercial zones.
- e. The PASA will be conducted on Mexico-domiciled motor carriers who apply for "long haul" operating authority. It will be conducted after the carrier's application (OP-1MX) has been approved, but prior to the issuance of provisional operating authority. "Long haul" carriers will only receive a safety audit as a pre-authorization requirement. Once a "long haul" carrier has been granted provisional operating authority, they will be subject to a compliance review (CR) within their first 18 months of operations.
- f. Carriers who apply to operate only within the border commercial zones will receive a SA after being granted their provisional certificate of registration and within their first 18 months of operation. However, these carriers may be subject to a CR instead of SA within the first 18 months if the carrier is identified as "at risk" in SafeStat, the subject of a non-frivolous complaint, involved in a fatal accident, or due to any other reason requiring immediate attention. Once a border commercial zone carrier receives a SA or a CR, they will not receive another SA.
- g. The PASA/SA has three parts: Parts A, B, and C.
 - 1. Part A is multipurpose and provides the background/introductory information for the audit.
 - 2. Part B is a battery of 70 questions (51 safety and 19 HM). The questions are structured to provide the auditor with a systematic review of the carrier's operations. The answers serve as indicators for the effectiveness of a carrier's compliance with the FMCSRs and/HMRs.
 - 3. The results of a PASA determine if:
 - a. The motor carrier should be granted permanent operating authority; or
 - b. Carriers that fail the PASA and subsequently fail to take the necessary corrective action, must complete the entire process (application, verification, etc.) all over again.
 - 4. The results of a SA determine if:
 - a. The motor carrier has the basic safety management controls in place, and should be allowed to continue operating within the border commercial zone; or
 - b. Carriers that fail the SA and subsequently fail to take the necessary corrective action or are unable to show a material error with the audit, must have their provisional certificate of registration suspended and/or revoked.

5. Part C provides specific information about the PASA/SA such as the name and title of the individual who signed the audit and comments from the auditor.
 - a. The pass/fail criteria for both the PASA and SA will be the same. The criteria for the PASA can be found in Appendix A to Subpart E of Part 365. The criteria for the SA can be found in Appendix A to Part 385.
 - b. When conducting PASAs the FMCSA shall inspect all vehicles found at the carrier's place of business during the audit. Inspections will only be conducted on those vehicles the carrier plans to operate in the United States that do not have a current CVSA decal.
 - c. All hand written or computer notes made during the PASA/SA will become part of the carrier's file.

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1.5.13.4 Mexican Licensia Federal - V2

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Description

Categoria – Letter indicates category of license
A: Authorizes the holder to operate commercial charter and passenger buses: i.e., intercity buses, charter buses, and tour buses.
B: Authorizes the holder to operate different types of commercial freight trucks, including combination vehicles: i.e., tractor trailer,

truck trailer, doubles and triples – trailers (excluding hazardous and hazardous waste materials).

C. Authorizes the holder to operate commercial trucks with 2 or 3 axles; i.e., single unit vehicles (excluding hazardous and hazardous waste materials).

D: Authorizes the holder to operate automobiles and small buses which do not exceed 7,716 pounds (3,500 kg) or have a capacity to carry no more than 13 passengers (including the driver who also serves as a tour guide) for purposes of tourism.

E. Authorizes the holder to operate vehicles that transport hazardous materials and hazardous waste materials. Note: E can be used as a B when no HM is being transported.

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1.5.14 SA Appendix SA-1

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1.5.15 Safety Management Plan



U.S. DEPARTMENT OF TRANSPORTATION FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Motor Carrier's Corrective Action to Remedy Its Safety Management Practices (49 CFR Part 385.325)

The Federal Motor Carrier Safety Administration (FMCSA), **Insert State** Division Office, has adopted the following procedures when a motor carrier submits evidence of corrective action to remedy its safety management practices in accordance with 49 CFR 385.325. The motor carrier must submit their request to the Division Administrator, Federal Motor Carrier Safety Administration, in which the motor carrier maintains its principal place of business. The motor carrier's request must include a written description of corrective actions taken and supporting documentation of these corrective actions that show the carrier has adequate basic safety management controls in place. Also, the motor carrier's roadside safety performance will be evaluated to ensure the motor carrier has the basic safety management controls implemented to operate safely.

The FMCSA, **Insert State** Division Office, will require a description of corrective action taken; *hereinafter referred to as the Motor Carrier's Safety Management Plan (SMP)*. A copy of the SMP shall be prepared and submitted to the following office:

***Insert Name of DA
Insert Division Office Address***

The SMP must address and include documentation indicating that corrective action has been taken for each deficiency identified in the received "Safety Audit Failure Notice".

The SMP must include, but is not limited to the following:

1. A copy of the received "Safety Audit Failure Notice".
2. The SMP must identify why the areas of noncompliance were permitted to occur.
3. An explanation of corrective actions must be completed for each failed regulatory section included in the "Safety Audit Failure Notice". **Supporting documentation of corrective action must be submitted with this request.** For example,

documentation may include items such as new policies and procedures, training programs, sign in lists, copies of missing drug/alcohol tests, etc.

4. When a carrier is in noncompliance with the regulation of 49 CFR Part 395, involving record of duty status (logs and/or time cards) as indicated on the written "Safety Audit Failure Notice", documentation showing hours of service checks and false record of duty status checks and their results must be included in the SMP for the most recent 30 day period. Documentation must include a summary report of your findings and an explanation of what corrective actions have been taken.
5. An explanation of what further corrective actions, if any, will be taken in the near future, such as hiring, training, new safety programs, reorganization of departments, purchasing of safety programs/equipment, etc.? Documentation must include a detailed summary of the planned action and dates of implementation.
6. Any additional documentation that relates to motor carrier safety and the prevention of crashes and hazardous materials incidents.
7. If your recordable accident rate per million miles (Accident Factor) was found to be unsatisfactory as noted on the received "Safety Audit Failure Notice", you must include, but is not limited to, defensive driving training and an accident countermeasure program as part of the SMP.
8. The SMP **must** include a written statement, signed by a corporate officer or in the case of a proprietorship, by **all** proprietors, certifying that you **will operate in compliance with the Federal Motor Carrier Safety Regulations, the Hazardous Material Regulations and their Safety Management Plan and the motor carrier's operation currently meets the below safety standard and factors:**

To meet the safety standard, the motor carrier shall demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

- a. Commercial driver's license standard violations (Part 383),
- b. Inadequate levels of financial responsibility (Part 387),
- c. The use of unqualified drivers (Part 391),
- d. Improper use and driving of motor vehicles (Part 392),
- e. Unsafe vehicles operating on the highways (Part 393),
- f. Failure to maintain accident registers and copies of accident reports (Part 390),
- g. The use of fatigued drivers (Part 395),
- h. Inadequate inspection, repair, and maintenance of vehicles (Part 396),
- i. Transportation of hazardous materials, driving and parking rule violations (Part 397).
- j. Violation of hazardous materials regulations (Parts 170 through 177), and
- k. Motor vehicle accidents and hazardous materials incidents.

Note: Corresponding regulations governing the Safety Audit process have been included on the following pages.

§385.319 What happens after the completion of the safety audit?

(a) Upon the completion of the safety audit, the auditor will review the findings with the new entrant.

(b) If the FMCSA determines that the safety audit discloses that the new entrant has adequate basic safety management controls, the FMCSA will provide the new entrant written notice as soon as practicable, but not later than 45 days after the completion of the safety audit, that it has adequate basic safety management controls. The new entrant's safety performance will continue to be closely monitored for the remainder of the 18-month period of new entrant registration.

(c) If the FMCSA determines that the findings of the safety audit disclose that the new entrant's basic safety management controls are inadequate, it will provide the new entrant written notice, as soon as practicable, but not later than 45 days after the completion of the safety audit, that its USDOT new entrant registration will be revoked and its operations placed out-of-service unless it takes the actions specified in the notice to remedy its safety management practices within:

(c)(1) 45 days of the date of the notice if the new entrant transports passengers in a CMV designed or used to transport 16 or more passengers, including the driver, or transports hazardous materials requiring placarding; or

(c)(2) 60 days of the date of the notice for all other new entrants.

§385.325 What happens after a new entrant has been notified under §385.319(c) to take corrective action to remedy its safety management practices?

(a) If the new entrant provides evidence of corrective action acceptable to the FMCSA within the time period provided in §385.319(c), including any extension of that period authorized under §385.323, the FMCSA will provide written notification to the new entrant that its DOT new entrant registration will not be revoked and it may continue operations.

(b) If a new entrant, after being notified that it is required to take corrective action to improve its safety management practices, fails to submit a written response demonstrating corrective action acceptable to FMCSA within the time specified in §385.319(c), including any extension of that period authorized under §385.323, the FMCSA will revoke its new entrant registration and issue an out-of-service order effective on:

(b)(1) Day 46 from the date of notification if the new entrant transports passengers in a CMV designed to transport 16 or more passengers, including the driver, or transports hazardous materials in quantities requiring placarding; or

(b)(2) Day 61 from the date of notification for all other new entrants; or

(b)(3) If an extension has been granted under §385.323, the day following the expiration of the extension date.

(c) The new entrant may not operate in interstate commerce on or after the effective date of the out-of-service order.

§385.327 What happens when a new entrant receives a notice under §385.319(c) that its new entrant registration will be revoked and it believes the FMCSA made an error in its determination?

(a) If a new entrant receives a revocation notice, it may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in determining that its basic safety management controls were inadequate.

(a)(1) The request must be made to the Field Administrator of the appropriate FMCSA Service Center.

(a)(2) The request must explain the error the new entrant believes the FMCSA committed in its determination.

(a)(3) The request must include a list of all factual and procedural issues in dispute, and any information or documents that support the new entrant's argument.

(b) The new entrant should submit its request no later than 15 days from the date of the notice of the inadequacy of its basic safety management controls. Submitting the request within 15 days will allow the FMCSA to issue a written decision before the prohibitions outlined in §385.319(c) take effect. Failure to petition within this 15-day period may prevent the FMCSA from issuing a final decision before the prohibitions take effect.

(c) The FMCSA may request that the new entrant submit additional data and attend a conference to discuss the issue(s) in dispute. If the new entrant does not attend the conference, or does not submit the requested data, the FMCSA may dismiss the new entrant's request for review.

(d) The FMCSA will complete its review and notify the new entrant in writing of its decision within 30 days after receiving a request for review from a hazardous materials or passenger new entrant and within 45 days from any other new entrant.

(e) A new entrant must make a request for an administrative review within:

(e)(1) 90 days of the date when it was initially notified under §385.319(c) that its basic safety management controls were inadequate; or

(e)(2) 90 days after it was notified that its corrective action under §385.319(c) was insufficient and its basic safety management controls remain inadequate.

(f) The Field Administrator's decision constitutes the final agency action.

(g) Notwithstanding this subpart, a new entrant is subject to the suspension and revocation provisions of 49 U.S.C. 13905 for violations of DOT regulations governing motor carrier operations.